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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–20–0037; NOP–20–03]

RIN 0581–AD75

National Organic Program (NOP); Final Decision on Organic Livestock and Poultry Practices Rule and Summary of Comments on the Economic Analysis Report

AGENCY: Agricultural Marketing Service, Agriculture Department (USDA).

ACTION: Final decision.

SUMMARY: On April 23, 2020, the United States Department of Agriculture Agricultural Marketing Service (AMS) published the Economic Analysis Report related to the Organic Livestock and Poultry Practices final rule (OLPP Rule), published on January 19, 2017, and the final rule withdrawing the OLPP Rule (Withdrawal Rule), published on March 13, 2018. AMS sought comment to evaluate the analysis in the Economic Analysis Report and to decide whether additional action should be taken in regard to the OLPP Rule. The public comment process for the Economic Analysis Report is being conducted consistent with an Order of the United States District Court for the District of Columbia, which granted USDA's Motion to Remand a legal challenge to the Withdrawal Rule for purposes of clarifying and supplementing the record regarding the economic analysis underlying both the OLPP Rule and the Withdrawal Rule. (*See Organic Trade Association* v. *USDA;* Civil Action No. 17–1875 (RMC) (March 12, 2020), ECF No. 112). After reviewing the Economic Analysis Report and the public comments on it, AMS is issuing this Final Decision concluding that no additional rulemaking action with respect to the OLPP Rule is necessary.

DATES: September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Tucker, Ph.D., Deputy Administrator, National Organic Program, Telephone: (202) 720–3252. Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: The Final Decision may be accessed under the following docket number available via *Regulations.gov*: AMS–NOP–20–0037; NOP–20–03. Additional supporting documents and related materials may also be referenced under this docket number.

Documents related to this Final Decision include: Organic Food Production Act (OFPA) (7 U.S.C. 6501–6524) and its implementing regulations (7 CFR part 205); the Organic Livestock and Poultry Practices (OLPP) proposed rule published in the **Federal Register** on April 13, 2016 (81 FR 21956); the OLPP Rule published in the **Federal Register** on January 19, 2017 (82 FR 7042); the final rule delaying the OLPP Rule's effective date until May 19, 2017, published in the **Federal Register** on February 9, 2017 (82 FR 9967); the final rule delaying the OLPP Rule's effective date until November 14, 2017, published in the **Federal Register** on May 10, 2017 (82 FR 21677); a second proposed rule presenting the four options for agency action listed in Section I, supra, published in the **Federal Register** on May 10, 2017 (82 FR 21742); a final rule further delaying the OLPP final rule's effective date until May 14, 2018, published in the **Federal Register** on November 14, 2017 (82 FR 52643); a proposed rule explaining AMS' intent to withdraw the OLPP final rule, published in the **Federal Register** on December 18, 2017 (82 FR 59988); the Withdrawal Rule, published in the **Federal Register** on March 13, 2018 (83 FR 10775); a request for comment on the OLPP Economic Analysis Report published in the **Federal Register** on April 23, 2020 (85 FR 22664).

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AMS Final Decision and Rationale

Background

The OFPA authorizes the United States Department of Agriculture (USDA or Department) to establish national standards governing the marketing of certain agricultural products as organically produced. The national standards are to assure consumers that organically produced products meet a consistent standard and to facilitate interstate commerce in fresh and processed food that is organically produced. USDA's Agricultural Marketing Service (AMS) administers the National Organic Program (NOP) under 7 CFR part 205.

On January 19, 2017, AMS published the OLPP Rule. After delaying the effective date of the OLPP Rule until May 14, 2018, AMS published the Withdrawal Rule on March 13, 2018, which withdrew the OLPP Rule. In the Withdrawal Rule, AMS explained that it had discovered three mathematical and methodological errors in the Regulatory Impact Analysis for the OLPP Rule (Final RIA), and that the Final RIA was thus incorrect in its assessment of the costs and benefits of the OLPP Rule. In connection with promulgating the Withdrawal Rule, AMS published a modified Regulatory Impact Analysis (Withdrawal RIA) that sought to correct for the three identified errors in the Final RIA while otherwise holding that analysis constant. Based on the modified analysis in the Withdrawal RIA, AMS projected that the costs of the OLPP Rule likely exceeded its benefits, and that projection was one of the factors on which AMS based its withdrawal of the OLPP Rule. AMS also concluded in the Withdrawal Rule that there was no market failure in the organic industry sufficient to warrant the particular regulations established by the OLPP Rule. Separate and apart from these economic and market-based considerations, AMS determined in the Withdrawal Rule that the statutory authority under OFPA did not permit the agency to regulate the organic industry based solely on concerns regarding animal welfare, and that the

OLPP Rule thus exceeded the scope of AMS's authority under the statutory scheme.

In the fall of 2017, the Organic Trade Association (OTA) filed a lawsuit in the U.S. District Court for the District of Columbia, challenging AMS's delay of the OLPP Rule's effective date; OTA subsequently amended its complaint to challenge the Withdrawal Rule. On October 31, 2019, OTA filed a motion for summary judgment accompanied by several extra-record attachments, including a privately commissioned analysis of the Withdrawal RIA performed by Dr. Thomas Vukina, a consultant and professor of economics at North Carolina State University. In the course of reviewing Dr. Vukina's analysis, AMS independently discovered that the Withdrawal RIA had failed to fully correct for one of the previously identified flaws and that the Final RIA contained additional flaws that had not previously been discerned or corrected.

In light of that discovery, on January 3, 2020, USDA filed a motion to suspend the summary judgment proceedings and requested voluntary remand to determine how to address the additional methodological flaws discovered in the prior RIAs. On March 12, 2020, the District Court granted that request. *See Organic Trade Association* v. *USDA;* Civil Action No. 17–1875 (RMC) (March 12, 2020), ECF No. 112 (the Order). In the Order, the District Court set a deadline of 180 days for the USDA to complete the action(s) that it was going to take on remand. The District Court also set a September 8, 2020 deadline for AMS to report back to the Court on the outcome of these proceedings.

Consistent with these developments, AMS directed a methodological review of the Final RIA and Withdrawal RIA, which was undertaken by an AMS economist that was not involved in the promulgation of the OLPP Rule or the Withdrawal Rule. That review resulted in the preparation of a report that summarized and explained its findings (Economic Analysis Report or Report). In the Economic Analysis Report, AMS first provided a backdrop by explaining the three errors that had been identified in the Withdrawal RIA: (1) The incorrect application of the discounting formula; (2) the use of an incorrect willingness to pay value for eggs produced under the new open access requirements; and (3) the incorrect application of a depreciation treatment to the benefit calculations. The Report explained that although the Withdrawal RIA correctly identified these errors and properly addressed the first two errors (incorrect discounting methodology and willingness-to-pay values), it had not fully removed the incorrect depreciation treatment from the cost and benefit calculations, which erroneously reduced the calculation of both costs and benefits.

The Report went on to identify and discuss four categories of additional errors in the Final RIA that were previously undetected and therefore inadvertently carried forward to the Withdrawal RIA. These are: (1) Inconsistent or incorrect documentation of key calculation variables; (2) an error in the volume specification affecting benefits calculations in two of three scenarios considered; (3) the incorrect use of production values in the benefits calculations that do not account for projected increased mortality loss; and (4) aspects of the cost calculations that resulted in certain costs being ignored, underreported, or inconsistently applied. In addition, the Report described certain minor errors that did not have a material impact on the cost and benefit calculations. On April 23, 2020, AMS published the Economic Analysis Report, with a request for public comment, in the **Federal Register** (85 FR 22664). AMS sought public comment to evaluate the analysis in the Economic Analysis Report and to decide whether additional action should be taken in regard to the OLPP Rule in light of the issues identified. The public comment period ended on May 26, 2020.

After reviewing the public comments, AMS is affirming the findings in the Economic Analysis Report, modifying its economic analysis of the OLPP Rule to the extent discussed herein, and issuing this Final Decision concluding that no additional rulemaking action with respect to the OLPP Rule is necessary as a consequence of those findings. This Final Decision explains AMS' rationale for these determinations in light of the findings contained in the Economic Analysis Report and the public comments received.

Summary of and Responses to Comments Received

AMS received 551 comments responding to the request for comment on the Economic Analysis Report. Several commenters provided substantive comments on the Economic Analysis Report and AMS addresses those comments in detail below. Many commenters addressed matters that were not related to the issues outlined in the Economic Analysis Report but rather pertained to policy considerations that, in the commenters' view, weighed in favor of the OLPP rule and against its withdrawal. These comments generally were beyond the scope of this proceeding.

1. Costs Were Inflated and Benefits Were Discounted

One commenter stated that the Economic Analysis Report appeared to inflate the costs of the OLPP Rule by front-loading them so that they were discounted less, while also minimizing or disregarding the benefits by heavily discounting them in the future. The commenter did not provide additional detail as to why he believed the costs and benefits of the OLPP Rule were improperly allocated, and AMS is thus limited in its ability to provide a meaningful response to the comment. However, AMS believes that it is important to clarify that the purpose of the Economic Analysis Report was simply to identify errors in the previous RIAs, including as to methodological choices that appeared unreasonable or inadvertent, and assess the materiality of those errors. Importantly, the Report did not attempt to redo the cost-benefit analysis in the prior RIAs or recalculate the costs and benefits of the OLPP Rule based on any assessment about the impact of those errors. It also did not evaluate any costs or benefits themselves, or independently assess when those costs and benefits would be realized. Therefore, the commenter's disagreement with the allocation of costs and benefits would appear to be a methodological critique of the Final RIA, rather than the Economic Analysis Report itself, or—in other words—a perceived additional flaw in the Final RIA not identified by the Economic Analysis Report.

To the extent that is the commenter's intent, AMS disagrees with the critique. AMS believes that, after correcting for the improper depreciation methodology and the other flaws outlined in the Economic Analysis Report, the Final RIA's approach to allocating costs and benefits over the 15-year analysis period was methodologically reasonable. The costs were allocated to different years of the analysis period based on the dates on which regulatory reforms were required to be implemented, as well as an assessment of the steps necessary for producers to come into compliance by those dates. Those allocations reflect the age of various capital investments across the industry, and distinctions between one-time, up-front land acquisition costs (on the one hand) and recurring annual costs (on the other). The benefit allocations were similarly based upon the assumption that producers not already in compliance would not come into compliance until the date they were

required to do so, and the Final RIA assessed benefits flowing from that date forward based on the projected output of those producers. Beyond the errors already identified in the Withdrawal RIA and Economic Analysis Report, AMS believes that this approach to allocating costs and benefits was reasonable, and the commenter has not provided sufficient detail for AMS to conclude otherwise.

The same commenter also stated that the Economic Analysis Report improperly corrected for any errors in the RIAs, skewing the results in the opposite direction. He also stated that AMS's explanation of the depreciation error schedule was not transparent and verifiable, and that AMS did not make available the workbooks showing the raw data and formulas used to calculate the costs and benefits. With regard to the assertion that the Report skewed results in the opposite direction, AMS reiterates that the intent of the Economic Analysis Report was not to undertake a correction of the errors in the prior RIAs but simply to identify them and discuss how they may have impacted the prior economic analyses. AMS acknowledges that such discussion, in some places, may have suggested that the errors could have been addressed in various ways and discussed how such corrections would change the analysis, and is subject to criticism in that regard. However, the commenter did not provide any information regarding why he believes that the Economic Analysis Report skewed the results in the opposite direction, or explain the method he thought AMS should have used instead or why, or even specify the methodological components that he believed were improperly corrected. AMS is therefore unable to respond to this comment further. With respect to the commenter's assertion that AMS did not made its underlying workbooks and analysis available, AMS disagrees. These documents were published in the **Federal Register** and posted on regulations.gov when AMS published the Economic Analysis Report.

2. Benefit Calculations Do Not Include Broiler Submarket

Another commenter stated that AMS failed to consider benefits in the broiler sub-market arising from the OLPP Rule. As this comment reflects, the Final RIA quantified the costs to broiler producers to comply with the OLPP Rule but did not attempt to quantify or otherwise estimate any benefits that may have resulted from such compliance. AMS did not identify this as an error in either the Withdrawal RIA or the Economic Analysis Report. AMS notes that no reliable numbers for benefits attributable to the broiler sub-market existed in the literature that was available at the time that the OLPP Final Rule was published. The commenters cite to a 2006 McVittie, Moran and Nevison paper, a 2014 Vukina, Andersen, and Muth paper on broilers, and a 2017 Mulder and Zomer paper for estimates of the welfare benefits of increased indoor space for broilers. However, these papers were based on working paper research that had not been peer reviewed and thus were not suitable for use as an official estimate in a regulatory analysis.[1] Furthermore, the 2017 Mulder and Zomer paper was not published until after the Final RIA was published and was focused on the preferences of Dutch consumers generally, whose preferences might not be reflective of those of U.S. organic consumers.[2] However, to the extent that existing research suggests that American consumers are willing to pay a price premium for organic broilers produced in compliance with the indoor stocking density requirements of the OLPP Rule, AMS acknowledges that the Final RIA may have underestimated the benefits of the OLPP Rule by assigning a $0 value to those benefits. If so, AMS agrees that this is another flaw in the Final RIA in addition to the errors described in the Economic Analysis Report.

3. Value of Prohibition on Forced Molting Not Included in Willingness To Pay Calculations

Some commenters stated that the Economic Analysis Report failed to explain why the reduced willingness to pay (WTP) values utilized in the Withdrawal RIA were justified. These commenters also claimed that the Economic Analysis Report failed to consider the benefits of the OLPP Rule's ban on forced molting. One commenter argued that the correct WTP value should be the sum of WTP values for outdoor access and the prohibition on forced molting that were found in the 2013 Heng, et al. study. The commenter further argued that because these two values are positive, the sum of both WTP values is greater than the outdoor access WTP value by itself.

The value of the OLPP Rule's prohibition on forced molting was not separately considered in the WTP analysis in either the Final RIA or the Withdrawal RIA. In the Final RIA, AMS used an estimated WTP range from the 2013 Heng et al. study that attempted to assess consumers' willingness to pay for eggs produced in a cage-free environment, with outdoor access, and without induced molting, among consumers that were and were not given information about the environmental impacts of those practices. In the Withdrawal RIA, AMS explained that this range was overstated as a measure of benefits attributable to the OLPP Rule because a cage-free environment was already required for organic egg production under regulations pre-dating the OLPP Rule. Thus, in the Withdrawal RIA, AMS used the estimated value range for the consumer WTP for outdoor access alone, found in the 2013 Heng et al. study, to calculate the benefit of the rule (per dozen eggs produced). AMS acknowledges that the Withdrawal Rule incorrectly stated that the prohibition on induced molting was already included in existing regulations and did not attempt to measure or include the benefits that might flow from that prohibition. However, AMS does not believe that this error materially affected the benefits calculation. First, AMS notes that the molting prohibition was not considered on either side of the cost-benefits calculation; that is, just as AMS did not attribute any benefits to this provision, nor did it measure the provision's costs. If AMS were to separately consider the benefits of this provision, it would also need to consider its costs, which would likely include the higher cost of acquiring replacement pullets, lower production, and lost opportunities to take advantage of seasonal increases in egg demand.

AMS believes, however, that it was methodologically appropriate to exclude the molting prohibition from both components of the analysis, because most organic producers were likely already complying with this prohibition prior to the promulgation of the OLPP Rule. Molting, which is synonymous

[1] One commenter cited the 2014 Vukina, Andersen, and Muth paper on broilers, which in turn referenced the 2012 ''Phase 2 Report in USDA, Agricultural Marketing Service, National Organic Program'', that estimated a 30 percent increase in WTP for broiler indoor space. Both these papers ultimately rely primarily on the 2006 McVittie, Moran and Nevison working paper to construct their WTP estimate for broiler indoor space.

[2] Similarly, the 2006 McVittie, Moran and Nevison paper studied the preferences of British consumers, not U.S. consumers. As noted by AMS, a 2012 Vukina, Anderson, Muth, and Ball paper on broilers stated, ''British consumers are probably somewhat different than U.S. consumers. They have different levels of real disposable income, and they are likely to have different sets of preferences. For example, there is ample casual evidence that European consumers are, on average, more concerned with animal welfare than their U.S. counterparts,'' Economic Impact Analysis of Proposed Regulations for Living Conditions for Organic Poultry—Revised Phase 2 Report at 2–2, prepared for Agricultural Marketing Service (Aug. 2012).

with forced molting[3] in a production setting, is induced in a flock by restricting the birds' diet and daily light exposure for two to three weeks. In this period, the birds molt, or lose and replace their feathers. Several weeks after their regular diet and access to light exposure are restored, a second egg production cycle begins with a reduced peak and duration compared to the first cycle. In general, the tradeoffs between whether to molt existing flocks or replace them consider the cost of acquiring new hens and the timing of increased production of eggs (a product with very seasonal demand). However, this choice is severely constrained in the context of organic production, even without the prohibition contained in the OLPP Rule. Under the existing regulations (*i.e.,* those that were in effect prior to the promulgation of the OLPP Rule and after its withdrawal), induced molting practices would be operationally difficult. Under these provisions, organic laying hens are required to have outdoor access, a condition that prevents the farmer from limiting light exposure through most of the year. Similarly, organic laying hens are required to be cage-free, a situation that allows layers to potentially acquire additional nutrition from the feed of other layers, the manure of other layers, and outdoor foraging. Because the farmer cannot entirely control the bird's light exposure or nutrient consumption, induced molting, under current organic rules, is economically impractical.[4] Furthermore, AMS has no data indicating that induced molting is commonly used in organic farming. AMS thus believes that this practice is likely rare in organic flocks even absent an express prohibition,[5] and that considering this prohibition in the economic analysis would do little to create new costs or benefits. AMS therefore concludes that independent consideration of the molting provision would not have materially changed the WTP value and that it was appropriate to exclude these costs and benefits from the assessment of costs and benefits in the Withdrawal RIA.[6]

4. Sample Bias

Another commenter argued that the Final RIA and the Withdrawal RIA introduced sample bias error in their estimation of organic consumers' WTP because the 2013 Heng study on which AMS based these estimations considered the entire consumer market for eggs rather than just the consumers in the existing market for organic eggs, which the commenter argued were the true beneficiaries of the OLPP Rule. Whether the relevant market consists solely of existing consumers of organic eggs or encompasses both existing and potential future consumers is not well established in the literature. The market growth rate assumed by the Final and Withdrawal RIAs was 12.7% per annum, which was based on growth rates in the years preceding the OLPP Rule. AMS notes that if this growth rate continued as projected, it would mean that the organic market would grow 81% in five years and 105% within six years, a value which substantially exceeds U.S. population growth. Such growth therefore assumes that either new organic consumers are entering the market from the non-organic market or, in a far less likely scenario, that existing organic egg consumers are dramatically increasing their egg consumption every year. It is inconsistent to assume that markets grow at extraordinarily high rates based on suggestions that some previously conventional egg consumers are now purchasing organic, while simultaneously assuming that only the preferences of consumers previously purchasing organic products should be considered in the calculation of WTP values. Moreover, the commenter did not provide any reason to differentiate between the WTP of existing organic consumers and organic consumers that might enter the market as a result of the OLPP Rule, or to assume that existing organic customers would have a higher WTP than the new organic customers for the characteristics considered in the RIAs. Indeed, the opposite could be true if the new customers are motivated to enter the market by the additional regulation encompassed by the OLPP Rule. Thus, AMS disagrees with this commenter's suggestion that the WTP values should have been based solely on literature studying existing organic consumers.[7]

5. Increase in Mortality Rates of Layers From 5% to 8%

Several commenters stated that the Final RIA t erroneously projected that mortality rates of organic layers would rise from 5% to 8% as a result of the OLPP Rule, and thus erroneously lowered egg production rates in light of that projection. They argued that the Economic Analysis Report's finding that the projected increase in mortality was not fully incorporated into the benefits calculation and thus led to an overestimation of benefits by 1.4 percent was in error because the Economic Analysis Report did not examine the original projected increase. In support of this critique, some of these commenters opined that actual flock records show lower mortality rates and provide better data than the sources cited by the Economic Analysis Report. However,

[3] Forced molting is an industry practice that restores the egg-laying productivity of egg-laying hens. Following their hatching, young egg-laying hens (pullets) are raised in specialized facilities that restrict the bird's exposure to light, which stimulates egg production. At 18 weeks of age, layers are moved to egg production facilities. At 20 weeks, hens begin laying small, undersized eggs. Eggs increase in size throughout the layer's life, but peak production (in terms of number of eggs produced) occurs at 20 weeks and then gradually declines. Without molting, at approximately 80 to 85 weeks, the first cycle of production is complete and layers are replaced with new hens acquired from pullet-raising operations. By molting birds for approximately 7 weeks when the layers are approximately 68 weeks old, the first cycle of production is shortened but allows for a second cycle of production that typically ends lasts 35 weeks or until the birds are 105 to 115 weeks old.

[4] Jacquie Jacob and Tony Pescatore, ''Molting Small-scale Commercial Egg Flocks in Kentucky'', 2018 Univ. of Kentucky Cooperative Extension Service, ASC–236 (''A molt . . . probably cannot be done with small flocks that are exposed to natural daylength.'')

[5] In 2016, approximately 4.8 percent of all 7.4 billion table eggs produced in the United States were organically certified (NASS, Survey of Organic Agriculture, 2017, NASS, Monthly Chicken and Egg Report, February 28, 2017). In that year, the maximum share of laying flocks that had been molted was 21.3 percent (NASS, Monthly Chicken and Egg Report, February 28, 2017).

[6] However, AMS notes that even if it were appropriate to separately consider the costs and benefits of the molting prohibition, it would be inappropriate to adopt the commenter's suggestion that AMS simply sum the values of the WTP for outdoor access and the WTP for forced molting in the 2013 Heng et al. study. First, the 2013 Heng et al. study did not find a significant effect of a prohibition on forced molting on consumer WTP within its analysis. While the 2013 Heng et al. study reported positive WTP values for different subsets of the average consumer, it also stated that ''the means for welfare-related attributes Access, CageFree, and NoMolting were statistically not-different from zero.'' In general, the lack of significance for a parameter estimate for a variable in a statistical model indicates that the variation seen in the data capturing the effect of that variable cannot be distinguished from that which would occur from ordinary, random effects. Second, the consumer choice experiment of the Heng et al. (2013) article may have exhibited scope insensitivity. *See* Alaya Spencer-Cotton, Marit E. Kragt and Michael Burton ''Spatial and Scope Effects: Valuations of Coastal Management Practices'' *Journal of Agricultural Economics* 69(2018)3:833–851. Scope insensitivity occurs when a consumer's stated valuation of a product with different socially beneficial attributes does not increase as more socially beneficial attributes are added to the product. Notably, Heng et al. (2013) observed that ''few differences are seen in the WTP distributions because of perceived differences in product quality'' regarding induced molting and explained that WTP differences in this category generally flowed from assessments regarding social and animal welfare benefits.

[7] However, to the extent WTP of existing consumers were to materially differ from those of future consumers, it would affect the benefits calculation in potentially complex ways, given that a core assumption underlying the benefits calculation was the projection that the market for organic eggs would more than quadruple over the analysis period.

they did not provide any flock records in support of this claim.

In the Final RIA, AMS projected that mortality rates of organic layers would rise by three percentage points, from a mortality rate of 5 percent to a mortality rate of 8 percent, as a result of the new outdoor access requirements that would expose layers to increased risks of disease and predation. This mortality allowance responded to public comments on the Final RIA and was guided by data from the Animal and Plant Health Inspection Service (APHIS) National Animal Health Monitoring and Surveillance (NAHMS) 2013 Layers study.[8] The Economic Analysis Report made reference to this component of the Final RIA's analysis, but it did not itself make or modify any projections regarding increased mortality rates because doing so would disturb the baseline levels of production. Rather, the Economic Analysis Report simply noted that AMS failed to fully incorporate the projected mortality increase into the Final RIA. While the Final RIA's cost estimates did reflect the lower egg production level based on projected higher mortality, the benefits were calculated on the unadjusted production levels without considering the lower production levels resulting from the mortality adjustment.

Regarding the accuracy of the mortality rate increase used by AMS, one commenter cited a survey by the Organic Trade Association conducted during the Economic Analysis Report's public comment period as showing that the mortality rate for laying hens was 6.07 percent. However, AMS does not have access to this data or the details of how it was collected, and the Agency thus cannot assess its methodological soundness or rely on it as being representative of the industry for the purposes of these proceedings. Furthermore, AMS finds support for its prior assumption of a 3 percent mortality increase in a 2020 study by Bestman and Bikker-Ouwejan,[9] which finds that, ''on average, 3.7 percent of hens in organic/free-range flocks were estimated to be killed by predators, while total mortality is 12.2 percent.'' This suggests that AMS's assumed 3 percentage point increase in mortality under the OLPP Rule accurately captures the likely increase in layer mortality from predation under the new open access requirement.

The commenter also cites Leenstra et al. (2014) as showing different rates of hen mortality by farm types, including organic, free-range, barn, and caged, and argues from these trends for the ''use of a zero excess mortality attributable to outdoor access because even if, currently, there is some degree of excess mortality due to outdoor access, by the time [the OLPP Final Rule] is fully implemented, technological and management advances are likely to eliminate the existing differences'' OTA comment on the Economic Analysis Report at 8. However, the commenter provided no data or information in supporting this argument and AMS finds it to be being highly speculative about the future direction of technology, as well as inconsistent with the Bestman study. More importantly, although AMS acknowledges that a range of viewpoints regarding the impact of the outdoor access provisions on the mortality levels of organic layers is supported by differing literature, for purposes of this Economic Analysis Report, AMS continues to believe that the loss rate projections in the Final RIA were methodologically sound and reasonable.

6. Correction to Lay Rates

A commenter stated that the Economic Analysis Report erred by concluding that annual egg production rates should be reduced from 24.7708 dozen eggs per layer to 23.0406 dozen eggs per layer because the lower figure relies on AMS Market News Report data rather than other data that the commenter believes to be more representative of the industry. AMS disagrees with this comment. Although the Final RIA assumed the average number of eggs laid per hen was 24.7708 dozen, that figure was used without citation and, based on AMS market data available, it overestimates the number of eggs produced by 7.51 percent compared to the estimates provided in the contemporaneous Market News Report. The 24.7708 dozen estimate in the Final RIA was also larger than the estimate used in the Preliminary RIA, which cited a rate of 284 eggs/hen/year from pasture production, which is equivalent to 23.67 dozen per year. The Economic Analysis Report noted that this error may be related to the fact that, although the Final RIA stated that AMS Market News data reported 14 million organic layers in production in 2016 based on April data, that statement was incorrect. AMS Market News actually reported an estimated 11,350,500 organic layers in each of the four reporting weeks in April of 2016 in its ''Weekly USDA Certified Organic Poultry and Eggs'' report. It was not until the November 2016 report that the estimated flock was increased to 14,087,500 layers. Additionally, the Economic Analysis Report explained that the highest level of organic egg production reported between April 2016 and January 2017 was 207,497 multiplied by 30-dozen cases, or 6,224,910 dozen eggs per week. The Economic Analysis Report calculated the laying rate at this highest level of weekly production, based on 52.143 weeks per year, and a laying flock 14,087,500 birds, to equal 324,584,359 dozen eggs produced per year, which yields an average of 276.49 eggs, or 23.0406 dozen, per laying hen per year. AMS believes that this methodology was appropriate.

A commenter stated that the AMS Market News Weekly USDA Certified Organic Poultry and Eggs Report should not be considered representative of the industry because the USDA report includes the disclaimer ''does not reflect all organic production; estimates are based on data collected from industry cooperators and other sources.'' An alternative higher production rate 24.689 dozen was suggested by the commenter. That estimate, however, is based on a sample of 5.62 million layers and is not publicly available. Because the size of this sample is only 40 percent of the size of the AMS data surveying 14.087 million layers, it is an even less robust sample of egg production than the AMS Market News Weekly Report and thus is likely to be less representative of the industry than the figures on which AMS relied.

7. Assumptions on Future Growth of Production

Finally, multiple commenters disagreed with the Final RIA's assumption that organic egg production will grow at the 12.7 percent rate that is applied in two of the three scenarios considered in the Final RIA. These commenters stated that by failing to recognize growth opportunities presented by new OLPP compliant operations, the growth rate assumptions in the Final RIA are too low. They further argued that, under the three scenarios considered by the Department, there was no reason for the Final RIA to assume that some organic producers would exit the market rather than comply with the OLPP Rule, given the strong demand and a growing market. They further contended that, even if some producers did exit the market, other OLPP compliant producers would replace them and that the Final RIA underestimated these new entrants' effects on the assumed growth rate of 12.7% per annum.

[8] *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/monitoring-and-surveillance/nahms/nahms_poultry_studies/.*

[9] Monique Bestman and Judith Bikker-Ouwejan ''Predation in Organic and Free-Range Egg Production'' *Animals* 2020 10,177.

The Economic Analysis Report did not critique the soundness of either the Final RIA's assumption that the industry would continue to grow by 12.7 percent annually over the 15-year period or its assumption that some organic producers would exit the industry rather than comply with the rule. Based on comments to the preliminary RIA, AMS increased its assumed rate of industry growth when it issued the Final RIA and it maintained that rate unchanged in the Withdrawal RIA. AMS continues to believe that this assumed rate appropriately incorporated industry information and expectations that were available at the time of the Final RIA's publication, which suggested an average growth rate of 12.7 percent across the preceding decade. The Economic Analysis Report addressed only the lack of consistency in the calculated production levels based on the assumed rate of growth and industry exit under the three scenarios considered in the Final RIA. For example, the Economic Analysis Report found that the Final RIA had multiple instances where the production levels used in the benefits and cost calculations of the RIA did not reflect the production levels implied by the assumed growth rates. AMS notes that even the 12.7 percent value assumed robust growth far exceeding annual growth in other sectors and was based on explosive growth in the organic industry that may have been due, in part, to independent factors not attributable to the organic label, such as lack of supply in the conventional markets. AMS believes that there is no reason to assume that growth would exceed that average rate 12.7 percent per year across the entire 15-year period, especially in light of the increased costs expected to result from the OLPP Rule and considerations of market maturation.

Comments on General Policy or Beyond the Scope of the Request for Comments

The limited purpose of this notice-and-comment proceeding was to assist AMS in forming a final assessment regarding the methodological soundness of the OLPP Final RIA and Withdrawal RIA and any policymaking conclusions that flow from that assessment. Most commenters provided their views on other aspects of the OLPP rulemaking, namely legal and policy arguments in favor of the OLPP Rule that do not relate to the methodology of the RIAs. Those views include opinions regarding AMS's legal authority to promulgate the OLPP Rule, the role of the NOSB in the rulemaking process, the support of stakeholders for the OLPP Rule, and the perceived benefits of the OLPP Rule. Although AMS appreciates these comments, they are beyond the scope of the request for comment and thus AMS is not providing responses to them in light of the limited scope of this proceeding. This proceeding was not intended to fully reopen the legal and policy discussion regarding the OLPP Rule. Those issues have already been the subject of three notice-and-comment proceedings in the last four years. To the extent the comments reiterate opinions already expressed during the rulemaking proceedings on the OLPP Rule, the delay of its effective date, and the Withdrawal Rule, AMS refers to the discussions of those rulemaking documents that provide its analysis and responses to those comments.

Commenters also made assertions regarding benefits of the OLPP that did relate, in some respect, to the soundness of AMS's analysis of costs and benefits but were speculative and difficult, if not impossible, to validate and/or quantify. For example, commenters argued that the Economic Analysis Report underestimated the importance of animal welfare to organic consumers, how the OLPP Rule would increase consumer knowledge of animal welfare practices in organic production, and how such knowledge could, in turn, increase organic consumer's willingness to pay organic price premiums. However, these asserted benefits are highly speculative and their proponents proffered no data or studies supporting or quantifying the alleged relationships between animal welfare practices, consumer knowledge of the same, and the impact of such knowledge on organic consumers' WTP. Furthermore. AMS believes that the Final RIA and, by extension, the Withdrawal RIA, expressly considered this idea by relying on research that attempted to measure consumer WTP for animal welfare attributes. Thus, AMS does not agree that these critiques identify any additional errors in the Final RIA or the Withdrawal RIA. Moreover, AMS notes that the organic regulations existing prior to the OLPP Rule set standards for livestock and poultry healthcare, feed, and living conditions. The significant expansion of the organic egg laying flock, organic egg production, and reported sales under these regulations demonstrate consumer trust in current practices and requirements.

Some commenters similarly argued that other alleged benefits of the OLPP Final Rule should have been considered in the Economic Analysis Report, including increased consumer confidence in the organic label; greater uniformity in organic practices; a more level playing field among producers; the promotion of soil fertility and nutrient recycling; a reduction or prevention of certain external costs generated by factory farms such as pollution; a reduction in import fraud; and a preservation of organic equivalency arrangements with foreign trading partners. However, the existence and scope of those benefits are speculative at best and the commenters proffered no data or studies quantifying or otherwise supporting the purported benefits. Thus, AMS believes that the opinions in these comments reflect policy disagreements regarding the possible consequences of the OLPP Rule, rather than methodological flaws in the economic analyses. AMS has already responded to the substance of these comments in the prior rulemaking proceedings.

Some commenters disagreed with USDA's use of the cost benefit analysis generally, stating that such analyses should not apply to programs in which participation is entirely voluntary. However, as noted in the proposed rule explaining AMS's intent to withdraw the OLPP Final Rule, published in the **Federal Register** on December 18, 2017 (82 FR 59988), the Office of Management and Budget designated withdrawal of the OLPP Final Rule an economically significant regulatory action, thereby necessitating a cost benefit analysis undertaken pursuant to Executive Orders 12866 and 13563, and these Executive Orders make no distinction between mandatory and voluntary programs. Other commenters said that AMS wrongly considered the costs and benefits to large factory farms,[10] whose industrialized production models the commenters asserted were innately non-organic. However, AMS regulates organic processes and it permits a variety of organic production practices. It does not presume the compatibility of certain production practices and models with organic requirements, and if a factory farm is able to develop and adhere to an approved organic system plan that complies with existing regulations, then AMS will deem it organic, regardless of its size or structure.

Some commenters stated that AMS should issue a corrected Regulatory Impact Analysis for the OLPP Withdrawal Rule instead of preparing a

[10] Another commenter said that AMS was incorrect to use the Small Business Administration's (SBA) threshold of $15 million in annual revenue as the cut-off for small organic farms in the Final RIA, given the size differences between the organic and non-organic submarkets. However, this comment falls well outside the scope of the request for comments on the Economic Analysis Report and AMS will not address it further.

report cataloguing and explaining the errors in both the Final RIA and the Withdrawal RIA. However, after AMS identified the additional errors in December 2019, it determined that the prudent course was to proceed incrementally by first identifying the errors and then deciding what to do about them. Had AMS decided that further policymaking was necessary, AMS agrees that preparation of a new RIA might have been appropriate, but AMS has decided against such further preparation for the reasons stated below. AMS disagrees that it should have attempted to correct the errors in the Final RIA. The errors in that RIA were so pervasive and intertwined with the rest of the analysis, and certain methodological choices so poorly documented, that it would be difficult to attempt to isolate and fully correct for each documented error. In light of the pervasive errors discovered to date and the failure to document certain methodological choices, AMS could not be confident that other errors may not later come to light, thus necessitating further corrections. Furthermore, even if the errors could be isolated from the rest of the analysis and fully corrected, the data underlying the cost benefit calculations date back to at least 2014 or earlier and thus may no longer be valid, especially in light of the economic changes occasioned by the COVID–19 pandemic. The only way that USDA could confidently address all of the errors and account for changing economic conditions would be to start the cost benefit analysis over from scratch. However, AMS believes that it would not have been possible to complete a new regulatory impact analysis, seek and address comments on that analysis, and finalize it within the time constraints imposed by the Court's order.

Additionally, as explained in the Withdrawal Rule, USDA does not believe that the OFPA provides statutory authority for the OLPP Rule or (even if it did) that there has been a market failure that makes an intervention in the market necessary and thus warrants the use of limited agency resources to complete a new RIA. As noted in the discussion of market failure or the lack thereof in the Withdrawal Rule (83 FR 10775), a variety of organic production practices may be employed to meet organic production standards and the existence of such variety is not an indication of a significant market failure. Moreover, as shown by the Organic Trade Association's annual 2019 Organic Industry Survey, demand for organic eggs and poultry was strong in the years prior to the promulgation of the OLPP Rule and has remained so since its withdrawal.

Finally, when USDA sought remand of the OLPP Withdrawal Rule from the District Court for the District of Columbia, it explained that it was doing so ''to address *whether* [the identified flaws] require changes to the economic analysis,'' and did not commit that it would necessarily undertake a new or corrected cost benefit analysis for the rule. As explained in this Final Decision, AMS has determined that it would not be feasible or prudent to attempt to correct the prior economic analyses and that preparation of a new analysis would not be an appropriate use of agency resources in light of AMS's other bases for withdrawing the OLPP Rule. Instead, USDA has produced the Economic Analysis Report and this final decision, which conclude that the RIAs for the OLPP Rule and Withdrawal Rule are seriously flawed and thus did not produce a reliable projection of costs and benefits, and AMS is withdrawing its prior conclusions regarding the economic impacts of the OLPP Rule to reflect these assessments without initiating further policy changes.

Another commenter questioned the integrity of the Economic Analysis Report, stating that its author, Dr. Peyton Ferrier, did not conduct an independent peer review of the OLPP Rule and Withdrawal Rule RIA's because he is an AMS employee who was tasked with reaffirming the agency's withdrawal decision. It stated that the Economic Analysis Report should be more properly considered a Litigation Report. AMS acknowledges that Dr. Peyton Ferrier is currently an AMS economist, but he was not involved in, nor was he an AMS economist at the time of, the development, drafting, or review of the OLPP RIA, the OLPP Rule, the Withdrawal RIA, or the Withdrawal Rule. Therefore, he was able to provide an independent perspective on the integrity of the methodology and calculations used by other USDA economists and organic program who were involved in the preparation of the RIAs for the prior rulemakings, and he did in fact conduct an independent peer review of those RIAs. Furthermore, Dr. Ferrier was not asked to opine on what the USDA's final decision on the OLPP rulemaking should be, and he did not advocate for a particular outcome in the Economic Analysis Report. Rather, he supplied underlying data and his analysis of that data, which USDA has considered in making and explaining this Final Decision.

Commenters also criticized Dr. Ferrier's reliance upon a 2013 article by Yan Heng, Hikaru Hanawa Peterson, and Xianghong Li (Heng et al.) for its values of consumer WTP for outdoor access. AMS actually considered estimates of consumer WTP from several studies, but Heng et al. (2013) was specifically cited in the Economic Analysis Report because that study supplied the figures that AMS relied upon in projecting the anticipated benefits of the OLPP in the Final RIA and Withdrawal RIA. As previously noted, the narrow purpose of the Economic Analysis Report was to review and critique the two prior RIAs and the errors in those RIAs revolved around the 2013 Heng study. Thus, it was relevant to the discussion of certain identified flaws or weaknesses in those analyses and Dr. Ferrier appropriately made it his focus.

Other comments challenged the Economic Analysis Report on the ground stated that the RIAs and Economic Analysis Report were not transparent and that the data and formulas that were used to prepare them had not been made publicly available or were inconsistent with the available private sector data, thus rendering them unreproducible and unverifiable. While the previous RIAs may not have been fully transparent in their modeling, AMS disagrees with commenter assertions that the Economic Analysis Report is not transparent in its modeling. The Economic Analysis Report comprehensively catalogues and explains errors presented in the previous RIAs, particularly those in the cost calculations and depreciation schedules. Furthermore, when AMS published the Economic Analysis Report, it also published several supporting documents and files explaining the report's data and formulations in the rulemaking docket on *regulations.gov*. AMS is unaware of the private sector data referenced in specific comments and the commenters did not provide those data.

One commenter stated that USDA failed to give commenters sufficient time to review and comment on the Economic Analysis Report because USDA did not expand the comment period on the report from 30 days to 60 days, as requested. However, a 60 day comment period would not have allowed AMS to complete the necessary steps to draft and publish the Economic Analysis Report, review and analyze the comments on the report, and complete this Final Decision by the deadline set by the District Court in the District of Columbia. Additionally, the Regulatory Impact Analysis for the OLPP Final Rule

has been available since January 2017, and the Regulatory Impact Analysis for the OLPP Withdrawal Rule has been publicly available since March 2018. Furthermore, USDA identified and described concerns regarding those RIAs in public litigation filings on January 3, January 24, and February 21, 2020. Thus, although the Economic Analysis Report was not itself published until April 23, 2020, AMS believes that commenters had ample opportunity to familiarize themselves with the Final RIA and the Withdrawal RIA and that 30 days was sufficient to review a report analyzing specific flaws in those documents.

AMS Final Decision

The purpose of the remand was to clarify and supplement the record regarding the OLPP and Withdrawal Rules in light of new facts and information that came to USDA's attention in December 2019, and for AMS to make a decision on whether further rulemaking action or economic analysis is warranted in light of that new information. USDA accomplished this goal by commissioning Dr. Peyton Ferrier to review the RIAs for the OLPP Final Rule and OLPP Withdrawal Rule and to articulate the impact of his findings on the existing regulatory framework under the Withdrawal Rule. Pursuant to this process, Dr. Peyton produced the Economic Analysis Report setting forth his conclusion that there were significant methodological flaws in both RIAs, and AMS solicited public comment on the findings in the Report. After careful consideration of the Economic Analysis Report and the comments received thereupon, USDA finds nothing in those comments that would cause it to reject or modify the findings of that report, and it affirms the findings of the report.

The Economic Analysis Report discredits the Final RIA because that RIA contained multiple methodological errors that were carried forward to the Withdrawal RIA and conclusively demonstrate its untrustworthiness. The Final RIA incorrectly applied a discounting formula to future benefits, used an inappropriate WTP for the value of eggs produced under the OLPP Rule's outdoor access requirements, and applied depreciation to the benefits of the rule but not the costs. The Withdrawal RIA corrected the first two errors, but it only partially corrected the third because it attempted to remove the depreciation treatment from the benefits calculation but did not fully do so. The Economic Analysis Report also found four other significant errors in the Final RIA that went undiscovered until they were brought to light by a review that was prompted by Dr. Thomas Vukina's extra-record analysis, and which thus carried over into the Withdrawal RIA. These results indicate that the Final RIA was significantly flawed and caused the Withdrawal RIA to be flawed. To the extent the Withdrawal Rule formed an assessment of the likely costs and benefits of the OLPP Rule based on that flawed analysis, AMS hereby modifies that assessment and concludes simply that the Final RIA does not support promulgation of the OLPP Rule in light of its significant flaws. Implementing the OLPP Rule based on such a flawed economic analysis is not in the public interest. AMS makes no changes to the conclusions set forth in the Withdrawal Rule that did not rely on the flawed RIAs and leaves the remainder of the Withdrawal Rule intact. In light of these findings and conclusions, USDA sees no basis for, and thus has decided not to take, any further regulatory actions or to make any policy changes with respect to the OLPP Rule.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–19939 Filed 9–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2011–0044]

RIN 0579–AD65

Brucellosis and Bovine Tuberculosis: Importation of Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, Agriculture Department (USDA).

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of cattle and bison with respect to bovine tuberculosis and brucellosis to establish a system to classify foreign regions as a particular status level for bovine tuberculosis and a particular status level for brucellosis. We are also establishing provisions for modifying the bovine tuberculosis or brucellosis classification of a foreign region. Finally, we are establishing conditions for the importation of cattle and bison from regions with the various classifications. The changes will make the requirements clearer and assure that they more effectively mitigate the risk of introduction of these diseases into the United States.

DATES: Effective October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Rhodes, Senior Staff Veterinarian, Regionalization Evaluation Services, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1236; (301) 851–3300.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93, subpart D (§§ 93.400–93.436, referred to below as part 93 or the subpart), contain requirements for the importation of ruminants into the United States to address the risk of introducing or disseminating diseases of livestock within the United States. Part 93 currently contains provisions that address the risk that imported bovines (cattle or bison) may introduce or disseminate brucellosis or bovine tuberculosis (referred to below as tuberculosis) within the United States. The current regulations, which may be divided into requirements that are generally applicable to most exporting countries and specific requirements that are applicable to Canada, Mexico, and the Republic of Ireland, do not account for changes in disease programs or disease prevalence that could increase or decrease the risk of spread of brucellosis or bovine tuberculosis posed by the importation of cattle or bison from foreign regions.

On December 16, 2015, we published in the **Federal Register** (80 FR 78461–78520, Docket No. APHIS–2011–0044) a proposal [1] to amend the regulations by consolidating the domestic regulations governing tuberculosis and those governing brucellosis, as well as to revise the tuberculosis- and brucellosis-related import requirements for cattle and bison to make these requirements clearer and ensure that they more effectively mitigate the risk of introduction of these diseases into the United States.

We solicited comments concerning our proposal for 90 days ending March 15, 2016. We extended the deadline for comments until May 16, 2016, in a document published in the **Federal Register** on March 11, 2016 (81 FR 12832–12833). We received 164 comments by the close of the extended comment period. Of those comments, 122 addressed the domestic provisions of the proposed rule and 42 addressed

[1] To view the proposed rule, supporting documents, and the comments we received, go to *https://www.regulations.gov/docket?D=APHIS-2011-0044.*

the import-related provisions. The comments were from captive cervid producers and captive cervid breeders' associations, cattle industry groups, State agriculture departments, State game and fish departments, veterinarians, representatives of foreign governments, and private citizens.

Domestic Regulations

After considering all the comments we received, we concluded that it is necessary to reexamine the proposed changes to the domestic tuberculosis and brucellosis programs. Therefore, in a document published in the **Federal Register** on March 27, 2019 (84 FR 11448–11449, Docket No. APHIS–2011–0044), we withdrew the proposed amendments to parts 50, 51, 71, 76, 77, 78, 86, and 161 in our December 16, 2015, proposed rule.

Import Regulations

We proposed to establish a system that would classify regions for tuberculosis or brucellosis based on whether the region has a program for tuberculosis or brucellosis control that meets certain standards and on the prevalence of the disease. We proposed the following classifications: Levels I through V for tuberculosis and Levels I through III for brucellosis. The classification system is based on prevalence as an indicator of risk. Level I regions have the lowest prevalence and bovine animals from these regions may be imported without testing. Prevalence increases with each successive level, as do the associated import requirements. The specific requirements for each level are set out in § 93.437 for tuberculosis, and in § 93.440 for brucellosis.

We further proposed to allow regions to request evaluation for a particular classification, to establish a process by which the United States Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) would evaluate such requests, and to allow APHIS to lower a region's classification based on emerging evidence. Finally, we proposed to establish conditions for the importation of cattle and bison that correspond to the tuberculosis or brucellosis classification of the region from which the cattle or bison would be exported. APHIS recognizes that there are three countries that enjoy particular status under the current part 93 regulations. These regions will continue to be able to trade with the United States under the terms of the status they currently hold until this final rule is effective and we act to adjust their status using the new approach spelled out in this final rule.

Commenters raised a number of concerns about the proposed rule. They are discussed below by topic.

International Standards

Some commenters asked whether the proposed import standards would be consistent with international guidelines for tuberculosis and brucellosis developed by the World Organization for Animal Health (OIE).

APHIS considered several alternative regulatory approaches to revising regulations governing the importation of cattle and bison with respect to bovine tuberculosis and brucellosis, including following OIE guidance on tuberculosis and brucellosis. The Terrestrial Animal Health Code of the OIE lays out three options for safe trade in bovine animals with regard to tuberculosis and brucellosis. These options can be categorized as (1) free country; (2) free herd; and (3) not free, respectively. APHIS conducted an analysis that compared adopting the OIE standards with the adaptation of U.S. domestic regulations for importation, as in this final rule.[2] APHIS concluded in that analysis that the adapted U.S. regulations are more restrictive in some cases than the OIE Terrestrial Code and less restrictive in others, depending on the classification level. APHIS further concluded that both the OIE Terrestrial Code and U.S. regulations adapted to importation would substantially mitigate import risk. However, the U.S. regulations reduce the risk to negligible levels; import risk under the OIE Terrestrial Code may exceed the U.S. appropriate level of protection. Unlike the adapted U.S. regulations, the OIE Terrestrial Code does not take into account the difference in tuberculosis risk between feeder animals and breeding animals, or factors that influence the ability of the exporting region to accurately comply with diagnostic testing and certification requirements. APHIS concluded in its analysis that the OIE Terrestrial Code is not sufficiently flexible to address the variable bovine tuberculosis prevalence levels reported by U.S. trading partners without either jeopardizing the status of U.S. eradication programs or constituting an unnecessary burden for the exporting country. Applying the adapted U.S. regulations would provide considerable flexibility in addressing the wide range of prevalence levels and programmatic approaches in exporting regions. Applying the adapted regulations is also consistent with the regionalization approach that APHIS takes for other diseases. Therefore, we determined from our analysis of relevant scientific data that risks to U.S. production were better addressed through the approach developed in this rule than through adoption of OIE Terrestrial Code.

Requesting Regional Classification for Tuberculosis

One commenter stated that the classification for a region should take into account the prevalence of both tuberculosis and brucellosis in the region. The commenter did not explain why they believed classification for one disease should be based on prevalence of both diseases.

APHIS disagrees with the commenter. Tuberculosis and brucellosis are different diseases with different risk factors, different transmission mechanisms, and differences in our ability to detect them. The existence of one has little influence on presence or absence of the other. However, foreign regions will need to be evaluated for both in order to export cattle to the United States other than for direct slaughter. Keeping disease evaluations and classifications separate is also consistent with our domestic policy.

One commenter stated that § 93.438 needs to clarify that it is period prevalence, and herd prevalence, rather than in-herd prevalence.

We agree. Prevalence is calculated over the time period described for each level, based on the number of affected herds. In some instances, the Administrator may allow calculation of period prevalence based on affected herd-years to avoid penalizing regions with small herd numbers. We have added a definition of *prevalence* to § 93.400 to clarify this.

Two commenters asked if a large regional request could mask pockets of high prevalence of tuberculosis.

APHIS agrees that there is potential to artificially dilute the apparent prevalence in large regions. Each region must therefore satisfy the regulatory requirements outlined in § 93.438, not just meet a certain prevalence level. Regions that satisfy the requirements have a strong tuberculosis program and demonstrated ability to effectively detect and contain tuberculosis infection, thereby limiting the risk to the United States. Regions that do not satisfy the requirements would be classified as Level V. All tuberculosis cases originating from a given region will be used in the prevalence calculations.

One commenter asked if Level I countries will need to supply

[2] The risk assessment can be viewed at *https://www.regulations.gov/document?D=APHIS-2011-0044-0046.*

information equivalent to an animal health plan required of a State or Tribe as described under the proposed rule.

APHIS notes that we proposed the requirement for an animal health plan as a change to the domestic tuberculosis regulations and we are making no changes to those regulations at this time. However, foreign regions seeking classification at any level would have to supply a detailed description of tuberculosis program activities. The region would generally also undergo a site visit, during which APHIS would evaluate and document compliance with the evaluation criteria outlined in § 93.438.

One commenter stated that the proposed criteria for requesting regional classification for tuberculosis do not work for biologically free countries. This commenter also stated that Australia has successfully eradicated tuberculosis and should be recognized as free of the disease.

We designed this rule to efficiently address the wide range of risk posed by U.S. trading partners with regard to tuberculosis and brucellosis. Australia is the only country that we are aware of that has made claims to biological freedom from tuberculosis. We are not making any changes based on this comment because we do not see a direct benefit to exporting regions, since cattle from Level I regions are already exempt from tuberculosis testing, and also because creating a classification for biologically free regions (*i.e.,* zero prevalence) would lead to trade disruptions should an outbreak occur. Our review of Australia's status is ongoing.

One commenter stated that surveillance should be required for all countries submitting a request for classification. However, another commenter expressed concern that the proposed requirements for surveillance do not recognize regions whose status for tuberculosis exceeds that of the United States, for example, those with a claim to biological freedom from the disease.

APHIS agrees that surveillance should be required for all regions submitting a request for a classification other than Level V, although the degree and intensity of surveillance may vary depending on regional conditions including past surveillance and findings. We anticipate that most such regions will have surveillance in place similar to the United States, involving a combination of slaughter surveillance and live animal testing. In rare instances, a region may have reached the point that they are confident that reducing active live animal and slaughter surveillance will not ultimately lead to a resurgence of the disease. In evaluating such regions, APHIS would still assess whether the historical and current surveillance measures provide equivalent assurance of tuberculosis detection to that in the United States.

One commenter noted that the proposed rule stated that guidance on how to complete a request for classification in a manner that will allow APHIS to review it expeditiously would be available on the APHIS website. The commenter asked what timeframe would be considered expeditious, and stated that it should be defined as meaning weeks or months, not years.

The time to complete the process from receipt of the initial request to publication of the final notice may vary considerably based on several factors, some of which are not under APHIS control. For example, the initial request might not be accompanied by sufficient information, so we would need to gather additional information. The length of time this takes would depend on the completeness of the initial submission, the complexity of the situation, and the responsiveness of the foreign region to requests for additional information.

After the initial request and information gathering, we would then conduct a site visit, which we consider to be a necessary component of an evaluation. Planning and scheduling the site visit takes at least 2 to 3 months. After the site visit, it takes at least 1 month to complete the report, longer if we need to request follow-up information or clarification.

In some instances, we will be able to classify a region after the first site visit, in which case we could use either the site visit report or a summary as the supporting document for the notice. However, in some cases we may not be able to classify the region at the status level it desires. In those cases we might proceed in one of several ways. For example, we might classify the region at a lower status level (higher risk level) based on our findings. Other possibilities could include not proceeding further with the evaluation, or working with the region to improve their tuberculosis program and status before proceeding. In these cases, there may be progress reports, additional information, and possibly another site visit, all of which would need to be compiled into a summary document to support a notice if we moved forward to that step.

A commenter noted that the proposed rule stated if we consider a request for classification complete, we would publish a notice in the **Federal Register** proposing to classify the region, and making available to the public the information upon which this proposed classification is based. The notice would request public comment. The commenter asked how APHIS intends to more quickly and efficiently publish these classification changes. The commenter also asked what the expected timeframe for the notices would be, and stated that the final rule needs to identify these timeframes.

Classification and reclassification would occur through publication of a notice in the **Federal Register** as described in § 93.438(c) and (d). The notice-based process offers substantial time savings over traditional rulemaking. It is the fastest method for making such changes available to APHIS that still provides the public opportunity to comment on each proposed action. However, there are factors outside our control that can affect the timing of publication and that make specifying the timeframes in the regulations infeasible. If we believe that the time required for reclassification via the notice-based process would result in a real and substantial increase in risk to animal health in the United States, we would act administratively to mitigate the risk while pursuing the notice-based process.

Import Requirements/Tuberculosis

Two commenters expressed support for the proposed requirements for the importation of bovines from foreign regions with respect to tuberculosis.

Several commenters asked if the Governments of Canada and Mexico supported the proposed requirements.

APHIS discussed the proposed tiered classification system and anticipated impact on cattle trade with representatives of the Governments of Canada and Mexico while developing the proposed rule. Neither expressed opposition to the proposed changes to the import requirements during these meetings nor in comments received on the proposed rule.[3]

Several commenters asked whether APHIS has the resources to carry out the proposed port-of-entry testing and expressed concern that the testing could cause logistical problems. The commenters stated that the requirements should be reconsidered.

[3] The comment submitted by the Government of Canada on the proposed rule can be viewed online at *https://www.regulations.gov/document?D=APHIS-2011-0044-0096.* The comment submitted by the Government of Mexico can be viewed online at *https://www.regulations.gov/document?D=APHIS-2011-0044-0205.*

APHIS disagrees. The proposed port-of-entry testing is very similar to that currently required for cattle from Canada and Mexico, which contribute nearly 100 percent of cattle imported into the United States. We do not anticipate that the proposed port-of-entry testing would cause logistical problems in excess of those currently experienced.

Two commenters asked if APHIS would provide additional resources to support port-of- entry testing for tuberculosis and support management of cattle held there pending test results when inspections are done on the U.S. side of the border.

As we explained above, the testing requirements we proposed are very close to those currently in place for cattle from Canada and Mexico. Since the requirements are not changing significantly, we do not anticipate that the resource needs will change significantly.

Two commenters asked if an APHIS veterinarian or a veterinarian from Mexico would be responsible for testing imported cattle at the port of entry.

When testing cattle at the port of entry is required by APHIS regulations, APHIS veterinarians would conduct the testing.

Several commenters questioned the scientific basis for setting the minimum testing age at 6 months for imported steers and spayed heifers.

Setting the minimum test age at 6 months is based on historic precedent in our domestic program. However, we agree with the commenters that since animals presented for import may only receive a single test to determine tuberculosis status, all ages should be test eligible. We are amending § 93.439 to remove the specified minimum test ages in response to this comment.

One commenter asked if the prohibition on Holsteins and Holstein crosses also extends to bovines exposed to Holsteins and Holstein crosses.

No. There is no practical way to accurately certify to this requirement.

One commenter stated that Level I status appears to require herd testing for animals and germplasm.

That is not the case. This rule set forth the requirements for importation of live cattle into the United States. Herd testing is not required for live cattle from regions that qualify as Level I for tuberculosis or brucellosis. Requirements for germplasm are contained in 9 CFR part 98, which we are not amending in this rulemaking.

One commenter stated that the definition of *immediate slaughter* should specify that these cattle are transported in sealed conveyances directly to the slaughterhouse and killed within 3 days of arrival.

We agree that bovines imported for immediate slaughter should be transported from the port of entry to the slaughtering establishment in a conveyance sealed with seals of the U.S. Government. Only bovines from Canada and Mexico are eligible for immediate slaughter, since bovines from other regions must undergo quarantine. The provisions for immediate slaughter bovines from Canada and Mexico appear in §§ 93.420 and 93.429, respectively. These sections specify travel in a sealed conveyance as well as other mitigation measures. While we had proposed to exempt bovines from the provisions of § 93.429, we neglected to specify appropriate mitigation measures for immediate slaughter cattle elsewhere in part 93. As a result, we do not intend to make the proposed change to § 93.429, which will preserve not only the requirement for travel in sealed conveyances but other mitigation measures specified for immediate slaughter bovines from Mexico. As a corollary, we are not adopting the provisions for bovines for immediate slaughter proposed in § 93.442(c) concerning brucellosis.

APHIS notes that the definition of *immediate slaughter* in § 93.400 specifies that the consignment is slaughtered within 2 weeks of entry. Only bovines from Canada and Mexico may be imported for slaughter without first undergoing quarantine. The 2 weeks allow time for slaughter and, in the case of Mexico, address residue concerns due to dipping. We are making no changes based on this portion of the comment.

Two commenters asked if official identification numbers of the animals will need to be written on the certificate for Level II accredited herds.

Yes. APHIS notes that § 93.439 as proposed says in 11 separate places that bovines must be (1) officially identified and (2) accompanied by a certificate that says that they are officially identified. To address this unnecessary repetition, we are amending § 93.439 to include a blanket statement in § 93.439(b) that all bovines imported under this section must be officially identified and accompanied by a certificate, issued in accordance with § 93.405(a), that indicates that they are officially identified. We will also amend § 93.439 to require that the certificate must record the means by which the bovines are officially identified. This action would also apply the requirements for official identification and certifications to bovines from Level I, which the proposal inadvertently omitted.

We are making matching changes for brucellosis by including a blanket statement in § 93.442(b) regarding official identification and certification, to apply also to bovines from Level I regions, and by amending paragraphs (d) and (e) in § 93.442 to remove the repetitive references to these requirements.

One commenter asked if animals from a Level II region under 6 months of age are allowed to be imported into the United States.

Yes. Animals from a Level II region under 6 months of age may be imported in accordance with § 93.439(d). These animals would be eligible for any required testing for tuberculosis under the provisions of that section, since we are removing the minimum age as described above.

Some commenters stated that animals from a Level II region under 6 months of age need to be tested in the United States when they reach maturity.

APHIS disagrees. As we explained above, we have amended several sections in § 93.439 to clarify that bovines of all ages are test eligible if testing for tuberculosis is required for importation. Retesting of bovines from Level II regions is not supported by our risk analysis or in line with current practice.

Some commenters stated that the proposed testing and movement requirements from States with Inconsistent status were more restrictive than the requirements for animals imported from Level III regions.

As we explained above, we have amended § 93.439 to clarify the testing requirements for imported cattle, including those from Level III regions. APHIS notes that the testing requirements we are adopting for importation from Level III regions are consistent with those currently required for domestic cattle moving from modified accredited States, as set out in 9 CFR 77.12(b). We also note that Inconsistent status was a term of art we proposed for our domestic tuberculosis regulations, and we are making no changes to the domestic tuberculosis regulations at this time. We will take this comment into consideration if we proceed with changes to the domestic regulations in the future.

Some commenters expressed concern that Level III requirements are not sufficiently stringent to address disease risk.

APHIS disagrees. As we explained above, the testing requirements for cattle imported from Level III regions are consistent with the testing requirements for domestic cattle moving from modified accredited States domestically.

These testing requirements have been demonstrated to be sufficient to prevent the spread of disease within the United States and we are confident they will prevent disease introduction from Level III regions.

Some commenters stated that Level III regions should not have accredited herds.

We note that Level III regions are subject to APHIS evaluation of the tuberculosis program and must meet the evaluation criteria specified in § 93.438. They cannot attain Level III status without demonstrating sufficient program strength to, among other things, maintain accreditation and supervision of accredited herds. We are making no changes in response to this comment.

Some commenters stated that cattle from accredited herds in Level III regions should have a negative test for tuberculosis within 60 days prior to importation.

APHIS disagrees with regard to steers and spayed heifers from accredited herds in Level III regions. As we explained above, Level III regions must meet evaluation criteria and demonstrate program strength. However, we agree that sexually intact bovines present a greater risk for introduction and dissemination of *Mycobacterium bovis.* Our risk assessment supports an individual negative test at the port of entry or during post-arrival quarantine, with negative results, for all sexually intact animals from Levels II–IV. We included this requirement in the proposed § 93.439(f)(1) for sexually intact bovines from accredited herds in Level IV regions but not for Levels II and III. We are therefore amending paragraphs (d)(1) and (e)(1) in § 93.439 to require testing at the port of entry or during post-arrival quarantine for sexually intact bovines from accredited herds in Level II and III, respectively.

Some commenters stated that Level III animals not from accredited herds and not destined for immediate slaughter need to be test eligible and at least individually tested.

APHIS agrees with the commenters. We have amended § 93.439(e)(2) to provide for testing of sexually intact animals from non-accredited herds in Level III regions at the border. As we explained above, we are also removing minimum age for individual testing, meaning all steers, spayed heifers, and sexually intact cattle from these herds will be eligible for testing.

Four commenters asked if it is necessary for cattle from Level III regions to be tested at the farm of origin.

No. We mistakenly proposed to require premises of origin testing for steers and spayed heifers from Level III regions, as well as steers and spayed heifers from Level IV regions. We have amended paragraphs (e)(3)(ii) and (f)(3)(ii) in § 93.439 to remove the requirement for testing to occur on the premises of origin.

One commenter asked if Level IV regions need to have an acceptable tuberculosis program in place.

Yes, as specified in § 93.437(d), Level IV regions would need to have an acceptable tuberculosis program in place.

One commenter stated that Level IV steers and spayed heifers not from accredited herds and not destined for immediate slaughter need to be test eligible and at least individually tested.

We agree with this commenter. Section 93.439(f)(3)(ii) requires a negative individual test of steers and spayed heifers from non-accredited herds in Level IV regions within 60 days prior to export, unless the bovines are exported within 60 days of the whole herd test and were included in that test. As noted above, we have amended this section to remove the proposed minimum test age of 2 months so that all bovines are test eligible.

Five commenters stated that the testing interval for whole herd tests for Level IV sexually intact non-accredited bovines needs to be specified. The commenters were specifically concerned about the lack of a declared maximum limit for the time between the second test and time of movement.

We agree with the commenters. The proposed rule specified an interval of 9 to 15 months between the whole herd tests but not the amount of time that can pass between the second whole herd test and export. We have amended § 93.439(f)(2)(i) to specify that the second whole herd test must be administered no less than 60 days and no more than 12 months before export.

One commenter asked how individual animal testing will be administered for cattle from accredited herds in Level IV regions.

The proposed rule did not distinguish between sexually intact and steers and spayed heifers from accredited herds in Level IV regions with regard to testing, which was an oversight. An individual test at the port of entry is only required for sexually intact cattle from accredited herds; steers and spayed heifers need a test within 60 days prior to export. We have amended § 93.439(f)(1) to correct this oversight. Actual testing would follow the procedures currently in place for animals from Mexico; for virtually all other countries, testing would take place during quarantine.

Nine commenters stated that Level V bovines should be prohibited importation into the United States.

We foresee three types of regions that APHIS would classify as Level V for tuberculosis. The first would be regions that APHIS determines to have an adequate tuberculosis program, but a prevalence rate over 0.5 percent. Because of the high prevalence, we would only allow limited quantities of animals with documented genetic histories (pedigrees, breed registries, genetic documentation, etc.). In general, we foresee a preclearance program with mitigations equivalent to those in the proposed rule being adequate for such imports, but could see instances in which additional mitigations (such as more extensive APHIS oversight in-country) may be necessary. Section 93.401(a) provides that the Administrator may in specific cases prescribe conditions for ruminants or products to be brought into or through the United States and we would establish such conditions for regions that need additional mitigations.

The second would be regions that can demonstrate a low prevalence based on surveillance, but do not request a full evaluation of their tuberculosis programs. These countries would eschew evaluation simply as being too much work based on expected levels of exports. We consider a preclearance program with mitigation equivalent to those in the proposed rule to be adequate for such imports, but could foresee instances in which alternate strategies (such as having the region provide documentation of accreditation standards or adherence to transnational animal health regulations) obviate the need for some of the requirements. As a result, we would allow limited imports from such regions with additional mitigations in accordance with the provisions of § 93.401(a), and post import protocols relevant to the countries on the APHIS website.

The third scenario would be when a region requests an evaluation from us, and APHIS determines that the region does not have an adequate tuberculosis program. In such instances, we foresee a preclearance program with mitigations equivalent to those in the proposed rule, but in which APHIS administers all in-country tests, as the only way of adequately mitigating disease risk.

We are amending § 93.439(g) to clarify this point and allow for the various scenarios above by stating that importation of bovines for purposes other than immediate slaughter may occur at the Administrator's discretion, subject to a preclearance program administered by APHIS and detailed in

an import protocol that we would post on the APHIS website. Such bovines would still be subject to an individual test for tuberculosis at the port of entry or during post-arrival quarantine, with negative results, as well as all applicable identification and certification requirements of part 93.

Finally, through a drafting error, the rule failed to consider bovines for immediate slaughter from Level V regions. As discussed above, this would only apply to parts of Mexico and is provided for in existing § 93.429.

Four commenters stated that Level V countries need to at least have a veterinary infrastructure and tuberculosis control program.

APHIS disagrees that these are necessarily requirements. As we discussed above, we consider preclearance programs with mitigation equivalent to those in the proposed rule to be adequate for such imports in most cases, and we have the ability to establish additional mitigations as needed.

Two commenters stated that embryos should be authorized for importation from Level V countries.

As we explained above, the requirements for germplasm are contained in part 98, which we are not amending in this rulemaking. As long as embryos meet the relevant requirements in part 98, they could be imported into the United States.

Requesting Regional Classification for Brucellosis

One commenter stated that Level I regions should be required to have been free for 2 years and in a country with a low prevalence.

APHIS notes that § 93.440(a) specifies that a region recognized as Level I for brucellosis must have a prevalence less than 0.001 percent for at least 2 years (24 consecutive months). Regions eligible for Level I or II must have demonstrated regulatory controls on the movement of livestock into, within, and from the region that correspond to the risk of dissemination of brucellosis associated with such movement. We are confident that these requirements will effectively mitigate the risk of introducing brucellosis into the United States.

One commenter stated that the process and timeframe for reclassification of a region for brucellosis should be specified in the regulations. The commenter also asked how APHIS intends to carry out the classification and reclassification in a timely manner.

The process for classification and reclassification of a region for brucellosis is the same as the process for classification and reclassification of a region for tuberculosis we described above, and is provided for in § 93.441(b) and (c). As we explained, the time to complete the process from receipt of the initial request to publication of the notice may vary considerably based on several factors, some of which are not under APHIS control. It is therefore not feasible to specify timeframes in the regulations. As with the process for tuberculosis, if we believed that the time required for reclassification via the notice-based process would result in a real and substantial increase in risk to animal health in the United States, we would act administratively to mitigate the risk while pursuing the notice-based process.

Import Requirements/Brucellosis

Two commenters stated that sexually intact cattle under 6 months of age should be prohibited importation.

APHIS disagrees. However, as discussed above for tuberculosis, we believe that all ages should be test eligible since some animals may only receive a single test to determine brucellosis status. We are therefore amending paragraphs (d) and (e) in § 93.442 to remove the specified minimum test ages for brucellosis as for tuberculosis.

We are also amending paragraph (a) in § 93.442 to remove the prohibition on importation of ruminants who have had a non-negative test response to any test for *Brucella* spp. at any time. This provision was not in line with procedures to export cattle from the United States. We allow animals that were non-negative on a *Brucella* spp. test to be exported provided that they had negative responses on subsequent testing. This change will provide consistency between our import and export requirements.

Miscellaneous

One commenter expressed concern that the definition of *herd of origin,* as proposed, could allow a constant flow of additional animals of disparate status into a herd, and these animals could still move as if they originated from that herd.

We agree with the commenter and are amending the definition of *herd of origin* by defining a herd of origin as a herd of one or more sires and dams and their offspring from which animals in a consignment presented for export to the United States originate, and by specifying that a herd of origin may be the birth herd or the herd where the animal has resided for a minimum 4-month period immediately prior to movement, unless otherwise specified in an import protocol. We are also amending the definition to allow additional animals to be moved into a herd of origin during or after the 4-month qualifying period only if they originate from an accredited herd or originate from a herd of origin that tested negative to a whole herd test conducted within the last 12 months and the individual animals being moved into the herd also tested negative to any additional individual tests for tuberculosis and brucellosis required by the Administrator. These changes are consistent with the definition that appears in the Bovine Tuberculosis Eradication Uniform Methods and Rules, effective January 1, 2005,[4] and with current requirements for live animals and germplasm.

We are amending the definition of *individual test* in § 93.401 to remove the words ''for purposes of this part, testing of individual animals as part of a whole herd test does not constitute an individual test'' because this requirement is not necessary in the context of this final rule and could cause confusion.

We are amending the definition of *whole herd test for brucellosis* in § 93.401 to specify that only sexually intact bovines need to be tested for brucellosis. There is no evidence that sexually neutered animals can transmit brucellosis and therefore no reason to test them.

Since the publication of the proposed rule, § 93.427 has been amended to change the branding requirements for steers and spayed heifers imported from Mexico (83 FR 64223–64225, Docket No. APHIS–2016–0050). We have therefore amended paragraph (a) of that section to be consistent with the new requirements.

We have made editorial changes to § 93.439 to consolidate the requirements for testing of sexually intact bovines from both accredited and non-accredited herds from a Level II region for tuberculosis because all sexually intact cattle from such regions are required to be tested at the port regardless of herd status. The provisions now appear in paragraph (d)(1) of that section.

Similarly, we have made editorial changes to § 93.442 to consolidate the requirements for the importation of steers and spayed heifers from all regions with respect to brucellosis. The

[4] This document may be accessed on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/cattle-disease-information/national-tuberculosis-eradication-program.*

provisions now appear in paragraph (c) of that section.

We have made minor, nonsubstantive changes to §§ 93.401(d), 93.438(a), and 93.441(a) to improve the clarity of those paragraphs.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866, 13563, 13771, and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than *de minimis* costs. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Bovine tuberculosis and brucellosis are contagious diseases affecting cattle as well as other livestock species. Cooperative State-Federal-Industry programs to eliminate bovine tuberculosis and brucellosis have been administered by APHIS, State animal health agencies, and U.S. livestock producers. The United States has made great strides in recent years toward eradication of brucellosis and bovine tuberculosis. As a result, occurrences of these diseases within the United States have become increasingly rare.

This rule amends the regulations governing the importation of cattle and bison with respect to bovine tuberculosis and brucellosis. The changes will make these requirements clearer and assure that they more effectively mitigate the risk of introduction of these diseases into the United States.

The potential economic effects associated with this rule are not significant. The requirements for the importation of cattle and bison from foreign regions will not change significantly as a result of this rule, and where they do change they will affect very few producers or importers.

This rule establishes a new system for classifying foreign regions regarding bovine tuberculosis and brucellosis and establishing the conditions under which cattle and bison may be imported into the United States. All foreign regions that currently export cattle to the United States will be evaluated under this new process before the conditions are put into effect. Conditions could change for a particular region following evaluation under this new system.

That being said, based on our knowledge of the brucellosis and bovine tuberculosis programs and prevalence rates of our trading partners, we do not expect requirements for the importation of cattle and bison from foreign regions to change significantly as a result of this rule. There are two specific exceptions to this expectation, however. These exceptions involve additional testing for sexually intact cattle from Mexico intended for export to the United States. Because most bovine exporting regions in Mexico do not have established brucellosis programs, they will automatically be classified in the lowest brucellosis category (Level III) and an additional whole herd brucellosis test will be required for imports of sexually mature and sexually intact cattle, *i.e.,* breeding cattle, from those regions. In addition, exporting regions currently Accreditation Preparatory for tuberculosis will likely be classified as Level IV and an additional whole herd tuberculosis test will be required for imports of sexually intact cattle from those regions. This rule also removes the requirement for a whole herd test and an individual test for sexually intact cattle from regions classified as Level I.

Some U.S. entities may be indirectly affected by changes in testing requirements. It is possible that small additional testing costs for some Mexican breeding cattle may result in an increase in U.S. import prices. Conversely, small cost savings due to the removal of a whole herd test requirement for some Mexican heifers may result in a decrease in U.S. import prices. However, these price impacts if they were to occur would be extremely minor.

A very small number of sexually intact cattle are imported from Mexico. In 2018, they numbered 290 head.[5] Costs of additional whole herd testing are dependent on the size of the herd from which bovines destined for export originate. Any imports of sexually intact cattle from non-accredited herds in Level III regions will be subject to an additional whole herd brucellosis test in order to export to the United States and will incur the cost of that testing. Cattle from accredited herds in Level III regions will not need any herd testing beyond that required for accreditation, just an individual test at the port. The majority of those cattle are likely to be of higher genetic quality and come from accredited herds. Sexually intact cattle imported from Level IV regions will also be subject to the additional whole herd tuberculosis test for export to the United States and incur the cost of that testing. The impact of the changes to testing requirements will be very limited. Any additional costs will represent a small portion of the value of the imported bovines. Very few cattle would be affected, and the per head cost associated with brucellosis and tuberculosis testing is equivalent to between 0.3 and 0.5 percent of the average per head value ($1,249) of imported Mexican breeding cattle in 2018.[6] Even if all imported sexually intact Mexican cattle imported in 2018 had been subject to additional testing, the additional cost would have been between $1,100 and $1,800 for those 290 head. Whether this additional testing cost would affect prices paid by U.S. importers would depend on the competitiveness of the market for Mexican breeding cattle and responsiveness of U.S. importers of Mexican breeding cattle to small price changes. We expect any impact would be negligible.

This rule also removes the requirement for a whole herd test and an individual test for sexually intact cattle from regions classified as Level I. APHIS intends to recognize the Mexican State of Sonora as Level I. While about 19 percent of the cattle imported from Sonora are currently spayed heifers, following the implementation of this rule they will likely be sexually intact. The only reason to spay heifers under the current rule is to avoid the cost of testing for brucellosis. Those Mexican

[5] Source: SENASICA, competent veterinary authority of Mexico. Personal correspondence with APHIS. May 2019.

[6] Source: U.S. Census Bureau, Economic Indicators Division. *http://usatrade.census.gov.*

producers may save the cost of spaying. The cost associated with spaying is equivalent to between 1.1 percent and 1.4 percent of the average per head value ($720) of imported Mexican heifers, excluding purebred breeding cattle, in 2018.[7] In total, those Mexican producers could potentially save a total of about $500,000 to $625,000 in costs by not spaying those imported heifers. These savings would represent less than 0.4 percent of the value of all imported Mexican heifers (about $181 million in 2018), and less than 0.2 percent of the value of all heifers imported into the United States in 2018 (about $505 million in 2018).

As with the breeding cattle, whether this cost savings would affect prices paid by U.S. importers would depend on the competitiveness of the market for Mexican heifers and responsiveness of U.S. importers of Mexican heifers to small price changes. We expect any impact would be very small.

The effects of this rule on foreign producers of cattle and bison represent a very small portion of the value of imported Mexican cattle. The potential additional cost associated with brucellosis and tuberculosis testing would be equivalent to between 0.3 and 0.5 percent of the average per head value of imported Mexican breeding cattle. The potential cost savings from not spaying heifers would be less than 0.4 percent of the value of all imported Mexican heifers. It is possible that the small additional testing costs may be reflected in an increase in the price of some imported Mexican breeding cattle, or the small cost savings from not spaying heifers may be reflected in a decrease in the price of some imported Mexican heifers. However, given the very small costs or cost savings relative to the value of the market, these price impacts if they were to occur will be, at most, extremely minor. Under these circumstances, the APHIS Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

[7] Source: U.S. Census Bureau, Economic Indicators Division. *http://usatrade.census.gov.*

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Government. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. Based on the foregoing, the USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that consultation is not recommended at this time. If consultation is requested, OTR will work with the APHIS to ensure quality consultation is provided.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule, which were filed under 0579–0442, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.400 is amended as follows:

■ a. By adding, in alphabetical order, definitions for *Accredited herd for brucellosis, Accredited herd for tuberculosis,* and *Brucellosis;*

■ b. By removing the definition for *Brucellosis certified-free province or territory of Canada;*

■ c. By revising the definition for *Herd of origin;*

■ d. By adding, in alphabetical order, definitions for *Import protocol, Individual test, Non-negative test results,* and *Notifiable disease;*

■ e. By removing the definition for *Official tuberculin test;*

■ f. By adding, in alphabetical order, definitions for *Prevalence, Spayed heifer, Steer,* and *Tuberculosis;*

■ g. By removing the definitions for *Tuberculosis-free herd* and *Whole herd test;* and

■ h. By adding, in alphabetical order, definitions for *Whole herd test for brucellosis* and *Whole herd test for tuberculosis.*

The additions and revision read as follows:

§ 93.400 Definitions.

* * * * *

Accredited herd for brucellosis. A herd that meets APHIS' standards for accreditation for brucellosis status. Standards for accreditation are specified in import protocols.

Accredited herd for tuberculosis. A herd that meets APHIS' standards for accreditation for bovine tuberculosis status. Standards for accreditation are specified in import protocols.

* * * * *

Brucellosis. Infection with or disease caused by *Brucella abortus.*

* * * * *

Herd of origin. A herd of one or more sires and dams and their offspring from which animals in a consignment presented for export to the United States originate. The herd of origin may be the birth herd or the herd where the animal has resided for a minimum 4-month period immediately prior to movement, unless otherwise specified in an import

criteria. Additional animals can be moved into a herd of origin during or after the 4-month qualifying period only if they:

(1) Originate from an accredited herd; or

(2) Originate from a herd of origin that tested negative to a whole herd test conducted within the last 12 months and the individual animals being moved into the herd also tested negative to any additional individual tests for tuberculosis and brucellosis required by the Administrator.

* * * * *

Import protocol. A document issued by APHIS and provided to officials of the competent veterinary authority of an exporting region that specifies in detail the mitigation measures that will comply with the regulations in this part regarding the import of certain animals or commodities.

Individual test. A test for brucellosis or tuberculosis that is approved by the Administrator and that is administered individually in accordance with this part to ruminants that are susceptible to brucellosis or tuberculosis.

* * * * *

Non-negative test results. Any test results for tuberculosis or brucellosis within the suspect, reactor, or positive range parameters of a pathogen assay that has been approved by the Administrator.

* * * * *

Notifiable disease. A disease for which confirmed or suspected occurrences within a region must be reported to the competent veterinary authority or other competent authority of that region.

* * * * *

Prevalence. The number of affected herds occurring during the period specified in §§ 93.437 and 93.440. In some instances, the Administrator may allow calculation of prevalence based on affected herd-years to avoid penalizing regions with small herd numbers.

* * * * *

Spayed heifer. A female bovine that has been neutered in a manner otherwise approved by the Administrator and specified in an import protocol.

* * * * *

Steer. A sexually neutered male bovine.

* * * * *

Tuberculosis. Infection with or disease caused by *Mycobacterium bovis.*

* * * * *

Whole herd test for brucellosis. A brucellosis test that has been approved by APHIS of all sexually intact bovines in a herd of origin that are 6 months of age or older, and of all sexually intact bovines in the herd of origin that are less than 6 months of age and were not born into the herd of origin, except those sexually intact bovines that are less than 6 months of age and originate directly from a currently accredited herd for brucellosis.

Whole herd test for tuberculosis. A tuberculosis test that has been approved by APHIS of all bovines in a herd of origin that are 6 months of age or older, and of all bovines in the herd of origin that are less than 6 months of age and were not born into the herd of origin, except those bovines that are less than 6 months of age and originate directly from a currently accredited herd for tuberculosis.

* * * * *

■ 3. Section 93.401 is amended by adding paragraph (d) to read as follows:

§ 93.401 General prohibitions; exceptions.

* * * * *

(d) *Cleaning and disinfection prior to shipment.* A means of conveyance used to transport an animal to the United States in accordance with this subpart must be cleaned and disinfected in a manner specified within an import protocol prior to transport, unless an exemption has been granted by the Administrator.

§ 93.406 [Amended]

■ 4. Section 93.406 is amended by removing and reserving paragraphs (a), (c), and (d).

§ 93.408 [Amended]

■ 5. In § 93.408, the first sentence is amended by removing the citation ''§§ 93.421 and 93.426'' and adding in its place the citation ''§ 93.421''.

■ 6. In each undesignated center heading in subpart D listed in the first column, redesignate the footnote number in the second column as the footnote number in the third column:

Undesignated center heading in subpart D	Old footnote	New footnote
Canada	8	9
Central America and West Indies	9	10
Mexico	10	11

■ 7. Section 93.418 is amended as follows:

■ a. By removing and reserving paragraphs (b) and (c);

■ b. By adding a heading for paragraph (d); and

■ c. In paragraph (d) introductory text, by removing the words ''the requirements of paragraphs (a) through (c)'' and adding the words ''the other requirements'' in their place.

The addition reads as follows:

§ 93.418 Cattle and other bovines from Canada.

* * * * *

(d) *Conditions for importation.* * * *

§ 93.423 [Amended]

■ 8. In § 93.423, the first sentence in paragraph (a) is amended by removing the words ''Ruminants intended for'' and adding the words ''In addition to all other applicable requirements of the regulations in this part, ruminants intended for'' in their place.

■ 9. In § 93.424, paragraph (b) is revised to read as follows:

§ 93.424 Import permits and applications for inspection of ruminants.

* * * * *

(b) For ruminants intended for importation into the United States from Mexico the importer or his or her agent shall deliver to the veterinary inspector at the port of entry an application, in writing, for inspection, so that the veterinary inspector and customs representatives may make mutual satisfactory arrangements for the orderly inspection of the animals. The veterinary inspector at the port of entry will provide the importer or his or her agent with a written statement assigning a date when the animals may be presented for import inspection.

■ 10. Section 93.427 is amended as follows:

■ a. By revising paragraphs (a) and (c);

■ b. By removing and reserving paragraph (d); and

■ c. In paragraph (e) introductory text, by removing the words ''paragraphs (a) through (d) of''.

The revisions read as follows:

§ 93.427 Cattle and other bovines from Mexico.

(a) *Cattle and other ruminants from Mexico.* Cattle and other ruminants from

Mexico, except animals being transported in bond for immediate return to Mexico or animals imported for immediate slaughter, may be detained at the port of entry, and there subjected to such disinfection, blood tests, other tests, and dipping as required in this part to determine their freedom from any communicable disease or infection of such disease. The importer shall be responsible for the care, feed, and handling of the animals during the period of detention. In addition, each steer or spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible ''M'' mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the steer or spayed heifer is being transported in bond for immediate return to Mexico or imported for slaughter in accordance with § 93.429. The ''M'' mark shall be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and shall be applied to each animal's right hip, within 4 inches (10 cm) of the midline of the tailhead (that is, the top of the brand should be within 4 inches (10 cm) of the midline of the tailhead, and placed above the hook and pin bones). The brand should also be within 18 inches (45.7 cm) of the anus.

* * * * *

(c) *Importation of Holsteins from Mexico.* The importation of Holstein steers, Holstein spayed heifers, Holstein cross steers, and Holstein cross spayed heifers from Mexico is prohibited.

* * * * *

§ 93.432 [Removed and Reserved]

■ 11. Section 93.432 is removed and reserved.

■ 12. Section 93.437 is added to read as follows:

§ 93.437 Tuberculosis status of foreign regions.

(a) *Level I regions.* APHIS considers certain regions of the world to have a program that meets APHIS requirements for tuberculosis classification in accordance with § 93.438, and a prevalence of tuberculosis in their domestic bovine herds of less than 0.001 percent over at least the previous 2 years (24 consecutive months).

(b) *Level II regions.* APHIS considers certain regions of the world to have a program that meets APHIS requirements for tuberculosis classification in accordance with § 93.438, and a prevalence of tuberculosis in their domestic bovine herds equal to or greater than 0.001 percent, but less than 0.01 percent, over the previous 2 years (24 consecutive months).

(c) *Level III regions.* APHIS considers certain regions of the world to have a program that meets APHIS requirements for tuberculosis classification in accordance with § 93.438, and a prevalence of tuberculosis in their domestic bovine herds equal to or greater than 0.01 percent, but less than 0.1 percent, over the previous year (12 consecutive months).

(d) *Level IV regions.* APHIS considers certain regions of the world to have a program that meets APHIS requirements for tuberculosis classification in accordance with § 93.438, and a prevalence of tuberculosis in their domestic bovine herds equal to or greater than 0.1 percent, but less than 0.5 percent, over the previous year (12 consecutive months).

(e) *Level V regions.* APHIS considers certain regions of the world not to have a program that meets APHIS requirements for tuberculosis classification in accordance with § 93.438, to have a prevalence of tuberculosis in their domestic bovine herds equal to or greater than 0.5 percent, or to be unassessed by APHIS with regard to tuberculosis.

(f) *Listing of regions.* Lists of all Level I regions, Level II regions, Level III regions, Level IV regions, and Level V regions for tuberculosis are found online, at *http://www.aphis.usda.gov/import_export/animals/live_animals.shtml.* Changes to the lists will be made in accordance with § 93.438.

■ 13. Section 93.438 is added to read as follows:

§ 93.438 Process for requesting regional classification for tuberculosis.

(a) *Request for regional classification; requirements.* A representative of the national government(s) of any country or countries who has the authority to make such a request may request that APHIS classify a region for tuberculosis. Requests for classification or reclassification must be submitted to APHIS electronically or through the mail as provided at *http://www.aphis.usda.gov/import_export/animals/live_animals.shtml.* Guidance regarding how to complete a request in a manner that will allow APHIS to review it expeditiously is available at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml,* and may also be obtained by contacting the National Director, Regionalization Evaluation Services, Strategy and Policy Unit, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737. At a minimum, in order for APHIS to consider the request complete, it must define the boundaries of the region, specify the prevalence level for tuberculosis within the region, and demonstrate the following:

(1) That there is effective veterinary control and oversight within the region;

(2) That tuberculosis is a notifiable disease within the region; and

(3) That the region has a program in place for tuberculosis that includes, at a minimum:

(i) Epidemiological investigations following the discovery of any infected animals or affected herds, or any animals or herds that have had non-negative test results following a test for tuberculosis, and documentation of these investigations;

(ii) Management of affected herds in a manner designed to eradicate tuberculosis from those herds in a timely manner, and documentation regarding this management;

(iii) Regulatory controls on the movement of livestock into, within, and from the region that correspond to the risk of dissemination of tuberculosis associated with such movement; and

(iv) Access to, oversight of, and quality controls for diagnostic testing for tuberculosis within the region.

(4) That the region has surveillance in place that is equivalent to or exceeds Federal standards for surveillance within the United States.

(b) *APHIS evaluation.* If, after reviewing and evaluating the request for classification, APHIS believes the region can be accurately classified for tuberculosis, APHIS will publish a notice in the **Federal Register** proposing to classify the region according to § 93.437, and making the information upon which this proposed classification is based available to the public for review and comment. The notice will request public comment.

(c) *APHIS determination.* (1) If no comments are received on the notice, or if comments are received but do not affect APHIS' proposed classification, APHIS will publish a subsequent notice in the **Federal Register** announcing that classification to be final and adding the region to the appropriate list on the APHIS website.

(2) If comments received on the notice suggest that the region be classified according to a different tuberculosis classification, and APHIS agrees with the comments, APHIS will publish a subsequent notice in the **Federal Register** making the information supplied by commenters available to the public, and proposing to classify the region according to this different classification. The notice will request public comment.

(3) If comments received on the notice suggest that insufficient information was supplied on which to base a tuberculosis classification, and APHIS agrees with the comments, APHIS will publish a subsequent notice in the **Federal Register** specifying the additional information needed before APHIS can classify the region.

(d) *Maintaining classification and reclassification initiated by APHIS.* If a region is classified under the provisions of this section, that region may be required to submit additional information or allow APHIS to conduct additional information collection activities in order for that region to maintain its classification. Moreover, if APHIS determines that a region's classification for tuberculosis is no longer accurate, APHIS will publish a notice in the **Federal Register** announcing the revised classification and setting forth the reasons for this reclassification.

(Approved by the Office of Management and Budget under control number 0579–0442)

■ 14. Section 93.439 is added to read as follows:

§ 93.439 Importation of ruminants from certain regions of the world; tuberculosis.

(a) *Importation of certain ruminants prohibited.* Notwithstanding any other provisions of this section, ruminants that are known to be infected with or exposed to tuberculosis and ruminants that have had a non-negative response to any test for tuberculosis at any time are prohibited importation into the United States.

(b) *Identification of bovines imported for any purpose.* Unless otherwise specified by the Administrator, bovines imported into the United States for any purpose must be officially identified and accompanied by a certificate, issued in accordance with § 93.405(a), that lists the official identification of the animals presented for import.

(c) *Importation of bovines from a Level I region.* Unless specified otherwise by the Administrator, bovines may be imported into the United States from a Level I region for tuberculosis in accordance with paragraph (b) of this section.[12]

(d) *Importation of bovines from a Level II region.* (1) Sexually intact bovines may be imported into the United States from a Level II region for tuberculosis for purposes other than immediate slaughter provided that the bovines are subjected to an individual test for tuberculosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results.

(2) Steers or spayed heifers may be imported into the United States from a Level II region for tuberculosis for purposes other than immediate slaughter in accordance with paragraph (b) of this section.

(e) *Importation of bovines from a Level III region.* (1) Bovines directly from currently accredited herds for tuberculosis. Bovines may be imported into the United States for purposes other than immediate slaughter directly from a currently accredited herd for tuberculosis in a Level III region for tuberculosis, provided that:

(i) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines originate directly from a currently accredited herd for tuberculosis; and

(ii) If sexually intact, the bovines are subjected to an individual test for tuberculosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results.

(2) Sexually intact bovines that do not originate directly from a currently accredited herd for tuberculosis may be imported into the United States from a Level III region for tuberculosis for purposes other than immediate slaughter, provided that:

(i) The bovines originate from a herd that was subjected to a whole herd test for tuberculosis on its premises of origin no more than 1 year prior to the export of the bovines to the United States, with negative results; and

(ii) The bovines are subjected to an individual test for tuberculosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(iii) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the animals meet the conditions for importation in paragraph (e)(2)(i) of this section.

(3) Steers or spayed heifers that do not originate directly from a currently accredited herd for tuberculosis may be imported into the United States from a Level III region for tuberculosis for purposes other than immediate slaughter provided that:

(i) The steers or spayed heifers are subjected to an individual test for tuberculosis no more than 60 days prior to export of the bovines to the United States, with negative results; and

(ii) The steers or spayed heifers are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the animals meet the conditions for importation in paragraph (e)(3)(i) of this section.

(f) *Importation of bovines from a Level IV region.* (1) Bovines may be imported into the United States for purposes other than immediate slaughter directly from a currently accredited herd for tuberculosis in a Level IV region for tuberculosis, provided that:

(i) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines originate directly from a currently accredited herd for tuberculosis and, if steers or spayed heifers, meet the conditions for importation in paragraph (f)(1)(iii) of this section; and

(ii) If sexually intact, the bovines are subjected to an individual test for tuberculosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(iii) If steers and spayed heifers, the bovines are subjected to an individual test for tuberculosis no more than 60 days prior to export of the bovines to the United States, with negative results.

(2) Sexually intact bovines that do not originate directly from a currently accredited herd for tuberculosis may be imported into the United States from a Level IV region for tuberculosis for purposes other than immediate slaughter, provided that:

(i) The bovines originate from a herd that was subjected to two whole herd tests for tuberculosis on its premises of origin and conducted no less than 9 months and no more than 15 months apart, with the second whole herd test conducted no less than 60 days and no more than 12 months prior the export of the bovines to the United States, with negative results each time; and

(ii) The bovines are subjected to an additional individual test for tuberculosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(iii) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines meet the requirements in paragraph (f)(2)(i) of this section.

(3) Steers or spayed heifers that do not originate directly from a currently accredited herd for tuberculosis may be imported into the United States from a Level IV region for tuberculosis for purposes other than immediate slaughter provided that:

(i) The bovines originate from a herd that was subjected to a whole herd test

[12] The importation of such bovines, as well as that of all other bovines covered by this section, is still subject to all other relevant restrictions of this part.

for tuberculosis on its premises of origin no more than 1 year prior to the export of the bovines, with negative results; and

(ii) The bovines are subjected to an additional individual test for tuberculosis no more than 60 days prior to export of the bovines to the United States, with negative results, except that the individual test is not required if the bovines are exported within 60 days of the whole herd test and were included in that test; and

(iii) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines meet the requirements in this paragraph (f)(3).

(g) *Importation of bovines from a Level V region.* At the discretion of the Administrator, bovines may be imported into the United States from a Level V region for tuberculosis for purposes other than immediate slaughter, provided that:

(1) The bovines are subject to a pre-clearance program administered by APHIS and detailed in an import protocol published on the APHIS website; and

(2) The bovines are subjected to an additional individual test for tuberculosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(3) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that bovines meet the requirements in paragraphs (g)(1) and (2) of this section.

(Approved by the Office of Management and Budget under control number 0579–0442)

■ 15. Section 93.440 is added to read as follows:

§ 93.440 Brucellosis status of foreign regions.

(a) *Level I regions.* APHIS considers certain regions of the world to have a program that meets APHIS requirements for brucellosis classification in accordance with § 93.441, and a prevalence of brucellosis in their domestic bovine herds of less than 0.001 percent over at least the previous 2 years (24 consecutive months).

(b) *Level II regions.* APHIS considers certain regions of the world to have a program that meets APHIS requirements for brucellosis classification in accordance with § 93.441, and a prevalence of brucellosis in their domestic bovine herds equal to or greater than 0.001 percent, but less than 0.01 percent over at least the previous 2 years (24 consecutive months).

(c) *Level III regions.* APHIS considers certain regions of the world not to have a program that meets APHIS requirements for brucellosis classification in accordance with § 93.441, to have a herd prevalence equal to or greater than 0.01 percent, or to be unassessed by APHIS with regard to brucellosis prevalence.

(d) *Listing of regions.* Lists of all Level I, Level II, and Level III regions for brucellosis are found online, at *http://www.aphis.usda.gov/import_export/animals/live_animals.shtml.* Changes to the lists will be made in accordance with § 93.441.

■ 16. Section 93.441 is added to read as follows:

§ 93.441 Process for requesting regional classification for brucellosis.

(a) *Request for regional classification; requirements.* A representative of the national government(s) of any country or countries who has the authority to make such a request may request that APHIS classify a region for brucellosis. Requests for classification or reclassification must be submitted to APHIS electronically or through the mail as provided at *http://www.aphis.usda.gov/import_export/animals/live_animals.shtml.* Guidance regarding how to complete a request in a manner that will allow APHIS to review it expeditiously is available at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml,* and may also be obtained by contacting the National Director, Regionalization Evaluation Services, Strategy and Policy Unit, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737. At a minimum, in order for APHIS to consider the request complete, it must define the boundaries of the region, specify the prevalence level for brucellosis within the region, and demonstrate the following:

(1) That there is effective veterinary control and oversight within the region;

(2) That brucellosis is a notifiable disease within the region;

(3) That the region has a program for brucellosis in place that includes, at a minimum:

(i) Epidemiological investigations following the discovery of any infected animals or affected herds, or any animals or herds that have had non-negative test results following a test for brucellosis, and documentation of these investigations;

(ii) Management of affected herds in a manner designed to eradicate brucellosis from those herds, and documentation regarding this management;

(iii) Regulatory controls on the movement of livestock into, within, and from the region that correspond to the risk of dissemination of brucellosis associated with such movement; and

(iv) Access to, oversight of, and quality controls on diagnostic testing for brucellosis within the region;

(4) That the region has surveillance in place that is equivalent to or exceeds Federal standards for brucellosis surveillance within the United States; and

(5) That, if the region vaccinates for brucellosis, it is in a manner that has been approved by APHIS.

(b) *APHIS evaluation.* If, after reviewing and evaluating the request for classification, APHIS believes the region can be accurately classified for brucellosis, APHIS will publish a notice in the **Federal Register** proposing to classify the region according to § 93.440, and making available to the public the information upon which this proposed classification is based. The notice will request public comment.

(c) *APHIS determination.* (1) If no comments are received on the notice, or if comments are received but do not affect APHIS' proposed classification, APHIS will publish a subsequent notice in the **Federal Register** announcing that classification to be final and adding the region to the appropriate list on the internet.

(2) If comments received on the notice suggest that the region be classified according to a different brucellosis classification, and APHIS agrees with the comments, APHIS will publish a subsequent notice in the **Federal Register** making the information supplied by commenters available to the public, and proposing to classify the region according to this different classification. The notice will request public comment.

(3) If comments received on the notice suggest that insufficient information was supplied on which to base a brucellosis classification, and APHIS agrees with the comments, APHIS will publish a subsequent notice in the **Federal Register** specifying the additional information needed before APHIS can classify the region.

(d) *Maintaining classification and reclassification initiated by APHIS.* If a region is classified under the provisions of this section, that region may be required to submit additional information or allow APHIS to conduct additional information collection activities in order for that region to maintain its classification. Moreover, if APHIS determines that a region's classification for brucellosis is no longer accurate, APHIS will publish a notice in

the **Federal Register** announcing the revised classification and setting forth the reasons for this reclassification.

(Approved by the Office of Management and Budget under control number 0579–0442)

■ 17. Section 93.442 is added to read as follows:

§ 93.442 Importation of ruminants from certain regions of the world; brucellosis.

(a) *Importation of certain ruminants prohibited.* Notwithstanding any other provisions of this section, ruminants that are known to be infected with or exposed to brucellosis are prohibited importation into the United States.

(b) *Identification of bovines imported for any purpose.* Unless otherwise specified by the Administrator, bovines imported into the United States for any purpose must be officially identified and accompanied by a certificate, issued in accordance with § 93.405(a), that lists the official identification of the animals presented for import.

(c) *Importation of steers and spayed heifers.* Unless otherwise specified by the Administrator, steers and spayed heifers may be imported into the United States from a region in accordance with paragraph (b) of this section, without further restrictions under this part.

(d) *Importation of sexually intact bovines from Level I regions.* Unless specified otherwise by the Administrator, sexually intact bovines may be imported into the United States from a Level I region for brucellosis in accordance with paragraph (b) of this section.[13]

(e) *Importation of sexually intact bovines from a Level II region.* (1) Sexually intact bovines directly from currently accredited herds for brucellosis. Sexually intact bovines may be imported into the United States for purposes other than immediate slaughter from a currently accredited herd for brucellosis in a Level II region for brucellosis, provided that the bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines originate directly from a currently accredited herd for brucellosis.

(2) Sexually intact bovines that do not originate directly from a currently accredited herd for brucellosis. Sexually intact bovines that do not originate directly from a currently accredited herd for brucellosis may be imported into the United States from a Level II region for brucellosis for purposes other than immediate slaughter, provided that:

(i) The bovines originate from a herd that was subjected to a whole herd test for brucellosis on its premises of origin no more than 90 days and no less than 30 days prior to the export of the bovines to the United States, with negative results; and

(ii) The bovines are subjected to an additional individual test for brucellosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(iii) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines meet the requirements in paragraph (d)(2)(i) of this section.

(f) *Importation of sexually intact bovines from a Level III region.* (1) Sexually intact bovines directly from currently accredited herds for brucellosis. Sexually intact bovines may be imported into the United States for purposes other than immediate slaughter from a currently accredited herd for brucellosis in a Level III region for brucellosis, provided that:

(i) The bovines are subjected to an individual test for brucellosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(ii) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines originate directly from a currently accredited herd for brucellosis.

(2) Sexually intact bovines that do not originate directly from a currently accredited herd for brucellosis. Sexually intact bovines that do not originate directly from a currently accredited herd for brucellosis may be imported into the United States from a Level III region for brucellosis for purposes other than immediate slaughter, provided that:

(i) The bovines originate from a herd that was subjected to two whole herd tests for brucellosis on its premises of origin conducted no less than 9 months and no more than 15 months apart, with the second test taking place no more than 90 days and no less than 30 days prior to the export of the bovines to the United States, with negative results each time; and

(ii) The bovines are subjected to an additional individual test for brucellosis at the port of entry into the United States or during post-arrival quarantine in accordance with § 93.411, with negative results; and

(iii) The bovines are accompanied by a certificate, issued in accordance with § 93.405(a), with an additional statement that the bovines meet the requirements in paragraph (e)(2)(i) of this section.

(Approved by the Office of Management and Budget under control number 0579–0442)

Done in Washington, DC, this 14th day of September 2020.

Lorren Walker,

Acting Undersecretary, Marketing and Regulatory Programs.

[FR Doc. 2020–20552 Filed 9–16–20; 8:45 am]

BILLING CODE 3410–34–P

[13] The importation of such bovines, as well as that of all other bovines covered by this section, is still subject to all other relevant restrictions of this chapter.

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2018–0030]

RIN 1557–AE93

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket R–1629]

RIN 7100–AF22

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF52

Standardized Approach for Calculating the Exposure Amount of Derivative Contracts; Correction

AGENCY: The Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Final rule; correcting amendments.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are issuing this final rule to make technical corrections to certain provisions of the capital rule related to the standardized approach for counterparty credit risk, which is used for calculating the exposure amount of derivative contracts and was adopted in a final rule published on January 24, 2020.

DATES: This final rule is effective September 17, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Guowei Zhang, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Kevin Korzeniewski, Counsel, Daniel Perez, Senior Attorney, or Daniel Sufranski, Attorney, Chief Counsel's Office, (202) 649–5490; or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597; the Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Benjamin McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–5270; Gillian Burgess, Senior Counsel, (202) 736–5564; or Andrew Hartlage, Counsel, (202) 452–6483, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunications Device for the Deaf (TDD) only, call (202) 263–4869.

FDIC: Michael Phillips, Counsel, *mphillips@fdic.gov,* (202) 898–3581; Catherine Wood, Counsel, *cawood@fdic.gov,* (202) 898–3788; Francis Kuo, Counsel, *fkuo@fdic.gov,* (202) 898–6654; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the ''agencies'') are making technical corrections to certain provisions of the capital rule relating to the standardized approach for counterparty credit risk (SA–CCR), which is used for calculating the exposure amount of derivative contracts and was adopted in a final rule published on January 24, 2020 (the SA–CCR final rule).[1] The amendatory text of the SA–CCR final rule did not accurately reflect the treatment described in the Supplementary Information section of the SA–CCR final rule for the items described below. This final rule corrects the agencies' capital rule consistent with the Supplementary Information section of the SA–CCR final rule. The agencies are also making corrections to certain cross-references within the capital rule that are no longer accurate as of the SA–CCR final rule's effective date.

Specifically, these technical corrections revise the capital rule for the following items:

- In § __.10(c)(4)(ii)(B)(*1*), related to the definition of total leverage exposure, two cross-references are being updated to reflect the renumbering of a provision in § __.34 in the SA–CCR final rule. The SA–CCR final rule modified the previous § __.34(b) to become § __.34(c), but the current capital rule erroneously continues to refer to § __.34(b).
- In § __.10(c)(4)(ii)(B)(*2*), related to the definition of total leverage exposure, the agencies are consolidating the text of paragraphs (*i*) and (*ii*) into a single new paragraph (*i*). Also, a new paragraph (*ii*) is being added to correspond to paragraphs (c)(4)(ii)(B)(*1*)(*i*) and (*ii*). As a result of these revisions, a banking organization that uses SA–CCR will be permitted to exclude the potential future exposure (PFE) of all credit derivatives or other similar instruments through which it provides credit protection from total leverage exposure, provided that it does so consistently over time. The option to exclude the PFE of certain credit derivatives is available to banking organizations that use the current exposure methodology (CEM) and the technical correction provides such option to banking organizations that use SA–CCR. The agencies indicated in the **SUPPLEMENTARY INFORMATION** section of the SA–CCR final rule that they would adopt the same treatment under SA–CCR as under CEM.[2]
- In § __.10, each use of the term ''U.S. GAAP'' is being replaced with ''GAAP'' because ''GAAP'' is the appropriate defined term in § __.2. Under § __.2, ''GAAP'' is defined as generally accepted accounting principles as used in the United States.
- In § __.32(f)(1), related to the general risk weight for corporate exposures and the exceptions for certain exposures to a qualifying central counterparty (QCCP), the cross-reference is being updated to refer to both paragraph (f)(2) and paragraph (f)(3). The SA–CCR final rule added paragraph (f)(3), but the current capital rule refers only to paragraph (f)(2).
- In § __.37(c)(2)(i)(B), related to the calculation of exposure amount for collateralized transactions, cross-references to § __.34(a)(1)–(2) are being updated to reflect the renumbering of a provision in § __.34 in the SA–CCR final rule. The SA–CCR final rule modified the previous § __.34(a) to become § __.34(b).
- In § __.132(c)(8)(iii) and (iv), and § __.132(c)(9)(i), references to table 2 for applicable supervisory factor determination are being updated to reflect the renumbering of the table.
- In § __.132(c)(9)(ii)(A)(*1*), related to the adjusted notional amount for an interest rate derivative contract or a credit derivative contract, the formula for supervisory duration is being updated to correct a typographical error.
- In § __.132(c)(9)(iv)(A)(*3*), related to the maturity factor, the revision provides that the higher margin period of risk set forth in that section must be used if there have been ''more than two'' outstanding margin disputes in the netting set during the prior two quarters. The Supplementary Information section of the SA–CCR final rule indicated that the agencies intended to align the criteria for applying the higher margin period of risk in SA–CCR with that in the internal models methodology, which applies only if more than two margin disputes in a netting set have occurred over the two previous quarters.[3] In other sections of the capital rule, the SA–CCR final rule included language referencing ''more than two'' margin disputes. However, in this section, the phrase ''two or more'' was used instead. The revised language thus implements the intended treatment as provided in the **SUPPLEMENTARY INFORMATION** section of the SA–CCR final rule.

[1] Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, 85 FR 4362 (January 24, 2020). The SA–CCR final rule took effect on April 1, 2020. The agencies also recently issued a notice stating that banking organizations could elect to adopt SA–CCR for the first quarter of 2020, on a best-efforts basis. 85 FR 17721 (March 31, 2020).

[2] *See* 85 FR 4362 at 4394–95. Specifically, the agencies stated that a banking organization subject to the supplementary leverage ratio may choose to exclude from the potential future exposures (PFE) component of the exposure amount calculation the portion of a written credit derivative that is not offset according to § __.10(c)(4)(ii)(D)(*1*)–(*2*) and for which the effective notional amount of the written credit derivative is included in total leverage exposure.

[3] *See* 85 FR 4362 at 4387.

- In §__.133(d)(4), which defines the capital requirement for default fund contributions to a QCCP, the definition for the term DF_{CCPCM}^{pref} is being updated to correct a typographical error.

- In § __.133(d)(5) and (6), related to the exposure of a clearing member banking organization to a QCCP arising from a default fund contribution, the revision corrects the calculation of the hypothetical capital requirement of a QCCP (K_{CCP}) and adds appropriate subscripts. The term EAD_i is amended to equal the exposure of the QCCP to each clearing member of the QCCP. While the **SUPPLEMENTARY INFORMATION** section of the SA–CCR final rule had discussed this treatment, the amendatory text referred to the exposure of each clearing member to the QCCP. The agencies also are making conforming corrections to the calculation of EAD for repo-style transactions in § __.133(d)(6)(iii). In addition, references to ''CCP'' in these paragraphs are being replaced by ''QCCP'' for clarity, as the paragraphs already only apply in the context of a QCCP.

Administrative Law

A. Administrative Procedure Act

The agencies are issuing this final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[4] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [5]

The agencies believe that the public interest is best served by implementing the final rule as soon as possible. Public comment is unnecessary, as the SA–CCR final rule was previously issued for comment, and the technical edits discussed here merely correct errors in the SA–CCR final rule.

The technical corrections made by this final rule will reduce ambiguity and ensure that banking organizations implement the SA–CCR provisions of the capital rule in a consistent manner and as described in the **SUPPLEMENTARY INFORMATION** section of the SA–CCR final rule. This will facilitate the ability of banking organizations to make the changes necessary to implement the SA–CCR final rule.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[6] The agencies find good cause to publish the final rule correction with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[7] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[8]

In the event that the final rule is deemed a ''major'' rule for purposes of the Congressional Review Act, the agencies are adopting the final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[9] As described above, the agencies believe that delaying the effective date of this final rule would be contrary to the public interest.

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule does not contain any information collection requirements and therefore, no submissions will be made by the agencies to OMB in connection with this final rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [10] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[11] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary and contrary to the public's interest, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the Agencies have concluded that the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[12] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such

[4] 5 U.S.C. 553.

[5] 5 U.S.C. 553(b)(B).

[6] 5 U.S.C. 553(d).

[7] 5 U.S.C. 801 *et seq.*

[8] 5 U.S.C. 801(a)(3).

[9] 5 U.S.C. 808.

[10] 5 U.S.C. 601 *et seq.*

[11] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with average annual receipts of $41.5 million or less. *See* 13 CFR 121.201.

[12] 12 U.S.C. 4802(a).

regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[13] For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish this final rule with an immediate effective date.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[14] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the final rule in a simple and straightforward manner.

G. OCC Unfunded Mandates Reform Act of 1995 Determination

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a 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 in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 3 as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

■ 2. Amend § 3.10 by:
■ a. Removing, in paragraphs (c)(4)(ii)(A), (c)(4)(ii)(B)(*1*) introductory text, (c)(4)(ii)(C)(*2*)(*i*), and (c)(4)(ii)(H), the phrase ''U.S. GAAP'' and by adding in its place the phrase ''GAAP'';
■ b. Removing, in paragraphs (c)(4)(ii)(B)(*1*) introductory text and (c)(4)(ii)(B)(*1*)(*i*), the phrase ''without regard to § 3.34(b)'' and by adding in its place the phrase ''without regard to § 3.34(c)''; and
■ c. Revising paragraphs (c)(4)(ii)(B)(*2*)(*i*) and (*ii*).

The revisions read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

(c) * * *
(4) * * *
(ii) * * *
(B) * * *

(*2*)(*i*) For a national bank or Federal savings association that uses the standardized approach for counterparty credit risk under section § 3.132(c) for its standardized risk-weighted assets, the PFE for each netting set to which the national bank or Federal savings association is a counterparty (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the national bank or Federal savings association, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), as determined under § 3.132(c)(7), in which the term C in § 3.132(c)(7)(i) equals zero, and, for any counterparty that is not a commercial end-user, multiplied by 1.4. For purposes of this paragraph (c)(4)(ii)(B)(*2*)(*i*), a national bank or Federal savings association may set the value of the term C in § 3.132(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the national bank or Federal savings association in connection with the client-facing derivative transactions within the netting set; and

(*ii*) A national bank or Federal savings association may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 3.132(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

* * * * *

■ 3. Section 3.32 is amended by revising paragraph (f)(1) to read as follows:

§ 3.32 General risk weights.

* * * * *

(f) * * * (1) A national bank or Federal savings association must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraphs (f)(2) and (f)(3) of this section.

* * * * *

§ 3.37 [Amended]

■ 4. Section 3.37 is amended by, in paragraph (c)(2)(i)(B), removing ''§ 3.34(a)(1) or (2)'' and adding in its place ''§ 3.34(b)(1) or (2).''

■ 5. Amend § 3.132 by:
■ a. In paragraphs (c)(8)(iii) and (iv), and (c)(9)(i), removing ''Table 2'' and adding in its place ''Table 3''; and
■ b. Revising paragraphs (c)(9)(ii)(A)(*1*) and (c)(9)(iv)(A)(*3*).

The revisions read as follows:

§ 3.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(c) * * *
(9) * * *
(ii) * * *

(A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

[13] 12 U.S.C. 4802.

[14] 12 U.S.C. 4809.

$$\text{Supervisory duration} = \max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date of the derivative contract.

* * * * *

(iv) * * *

(A) * * *

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a netting set subject to more than two outstanding disputes over margin that lasted longer than the MPOR over the previous two quarters, the applicable floor is twice the amount provided in paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section.

* * * * *

■ 6. Section 3.133 is amended by revising paragraphs (d)(4) and (5), (d)(6) paragraph introductory text, and paragraphs (d)(6)(i) through (iii) to read as follows:

§ 3.133 Cleared transactions.

* * * * *

(d) * * *

(4) *Capital requirement for default fund contributions to a QCCP.* A clearing member national bank's or Federal savings association's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP} + DF^{pref}_{CCPCM}}\right); 0.16\ percent * DF^{pref}\}$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

DF^{pref} is the prefunded default fund contribution of the clearing member national bank or Federal savings association to the QCCP;

DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the QCCP; and

DF^{pref}_{CCPCM} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, a national bank or Federal savings association must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the national bank or Federal savings association determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the national bank or Federal savings association, is equal to:

$$K_{CCP} = \Sigma_{CM_i} EAD_i * 1.6\ percent$$

Where:

CM_i is each clearing member of the QCCP; and

EAD_i is the exposure amount of the QCCP to each clearing member of the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a QCCP to a clearing member.* (i) The EAD of a QCCP to a clearing member is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the QCCP and the clearing member that are cleared transactions and any guarantees that the clearing member has provided to the QCCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the exposure amount of the QCCP to the clearing member for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 3.132(c) (or, with respect to a QCCP located outside the United States, under

a substantially identical methodology in effect in the jurisdiction) using a value of 10 business days for purposes of § 3.132(c)(9)(iv); less the value of all collateral held by the QCCP posted by the clearing member or a client of the clearing member in connection with a derivative contract for which the clearing member has provided a guarantee to the QCCP and the amount of the prefunded default fund contribution of the clearing member to the QCCP.

(iii) With respect to any repo-style transactions between the QCCP and a clearing member that are cleared transactions, EAD is equal to:

$EAD_i = \max\{EBRM_i - IM_i - DF_i; 0\}$

Where:

$EBRM_i$ is the exposure amount of the QCCP to each clearing member for all repo-style transactions between the QCCP and the clearing member, as determined under § 3.132(b)(2) and without recognition of the initial margin collateral posted by the clearing member to the QCCP with respect to the repo-style transactions or the prefunded default fund contribution of the clearing member institution to the QCCP;

IM_i is the initial margin collateral posted by each clearing member to the QCCP with respect to the repo-style transactions; and

DF_i is the prefunded default fund contribution of each clearing member to the QCCP that is not already deducted in paragraph (d)(6)(ii) of this section.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 7. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note; Pub. L. 116–136, 134 Stat. 281.

■ 8. Amend § 217.10 by:

■ a. Removing, in paragraphs (c)(4)(ii)(A), (c)(4)(ii)(B)(*1*), (c)(4)(ii)(B)(*2*)(*i*), and (c)(4)(ii)(H), the phrase ''U.S. GAAP'' and by adding in its place the phrase ''GAAP'';

■ b. Removing, in paragraphs (c)(4)(ii)(B)(*1*) introductory text and (c)(4)(ii)(B)(*1*)(*i*), the phrase ''without regard to § 217.34(b)'' and by adding in its place the phrase ''without regard to § 217.34(c)''; and

■ c. Revising paragraphs (c)(4)(ii)(B)(*2*)(*i*) and (*ii*).

The revisions read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) * * *

(*2*)(*i*) For a Board-regulated institution that uses the standardized approach for counterparty credit risk under section § 217.132(c) for its standardized risk-weighted assets, the PFE for each netting set to which the Board-regulated institution is a counterparty (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the Board-regulated institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), as determined under § 217.132(c)(7), in which the term C in § 217.132(c)(7)(i) equals zero, and, for any counterparty that is not a commercial end-user, multiplied by 1.4. For purposes of this paragraph (c)(4)(ii)(B)(*2*)(*i*), a Board-regulated institution may set the value of the term C in § 217.132(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the Board-regulated institution in connection with the client-facing derivative transactions within the netting set; and

(*ii*) A Board-regulated institution may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 217.132(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

* * * * *

■ 9. Section 217.32 is amended by revising paragraph (f)(1) to read as follows:

§ *217.32* General risk weights.

* * * * *

(f) * * * (1) A Board-regulated institution must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraphs (f)(2) and (f)(3) of this section.

* * * * *

§ 217.37 [Amended]

■ 10. Section 217.37 is amended by, in paragraph (c)(2)(i)(B), removing ''§ 217.34(a)(1) or (2)'' and adding in its place ''§ 217.34(b)(1) or (2).''

■ 11. Amend § 217.132 by:

■ a. In paragraphs (c)(8)(iii) and (iv), and (c)(9)(i), removing the words ''Table 2'' and adding in its place ''Table 3''; and

■ b. Revising paragraphs (c)(9)(ii)(A)(*1*) and (c)(9)(iv)(A)(*3*).

The revisions read as follows:

§ 217.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(c) * * *

(9) * * *

(ii) * * *

(A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$\text{Supervisory duration} = \max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date of the derivative contract.

* * * * *

(iv) * * *

(A) * * *

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a netting set subject to more than two outstanding disputes over margin that lasted longer than the MPOR over the previous two quarters, the applicable

floor is twice the amount provided in paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section.

* * * * *

■ 12. Section 217.133 is amended by revising paragraphs (d)(4) and (5), (d)(6) introductory text, and paragraphs (d)(6)(i) through (iii) to read as follows:

§ 217.133 Cleared transactions.

* * * * *

(d) * * *

(4) *Capital requirement for default fund contributions to a QCCP.* A clearing member Board-regulated institution's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP}+DF_{CCPCM}^{pref}}\right); 0.16\ percent * DF^{pref}\}$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

DF^{pref} is the prefunded default fund contribution of the clearing member Board-regulated institution to the QCCP;

DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the QCCP; and

DF_{CCPCM}^{pref} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, a Board-regulated institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the Board-regulated institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the Board-regulated institution, is equal to:

$K_{CCP} = \Sigma_{CMi}\ EAD_i$ * 1.6 percent

Where:

CM_i is each clearing member of the QCCP; and

EAD_i is the exposure amount of the QCCP to each clearing member of the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a QCCP to a clearing member.* (i) The EAD of a QCCP to a clearing member is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the QCCP and the clearing member that are cleared transactions and any guarantees that the clearing member has provided to the QCCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the exposure amount of the QCCP to the clearing member for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 217.132(c) (or, with respect to a QCCP located outside the United States, under a substantially identical methodology in effect in the jurisdiction) using a value of 10 business days for purposes of § 217.132(c)(9)(iv); less the value of all collateral held by the QCCP posted by the clearing member or a client of the clearing member in connection with a derivative contract for which the clearing member has provided a guarantee to the QCCP and the amount of the prefunded default fund contribution of the clearing member to the QCCP.

(iii) With respect to any repo-style transactions between the QCCP and a clearing member that are cleared transactions, EAD is equal to:

$EAD_i = \max\{EBRM_i - IM_i - DF_i; 0\}$

Where:

$EBRM_i$ is the exposure amount of the QCCP to each clearing member for all repo-style transactions between the QCCP and the clearing member, as determined under § 217.132(b)(2) and without recognition of the initial margin collateral posted by the clearing member to the QCCP with respect to the repo-style transactions or the prefunded default fund contribution of the clearing member institution to the QCCP;

IM_i is the initial margin collateral posted by each clearing member to the QCCP with respect to the repo-style transactions; and

DF_i is the prefunded default fund contribution of each clearing member to the QCCP that is not already deducted in paragraph (d)(6)(ii) of this section.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 13. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174; Pub. L. 116–136, 134 Stat. 281.

■ 14. Amend § 324.10 by:

■ a. Removing, in paragraphs (c)(4)(ii)(A), (c)(4)(ii)(B)(*1*), (c)(4)(ii)(B)(*2*)(*i*), and (c)(4)(ii)(H), the phrase ''U.S. GAAP'' and by adding in its place the phrase ''GAAP'';

■ b. Removing, in paragraphs (c)(4)(ii)(B)(*1*) introductory text and (c)(4)(ii)(B)(*1*)(*i*), the phrase ''without regard to § 324.34(b)'' and by adding in its place the phrase ''without regard to § 324.34(c)''; and

■ c. Revising paragraphs (c)(4)(ii)(B)(*2*)(*i*) and (*ii*).

The revisions read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) * * *

(*2*)(*i*) For an FDIC-supervised institution that uses the standardized approach for counterparty credit risk under section § 324.132(c) for its standardized risk-weighted assets, the PFE for each netting set to which the FDIC-supervised institution is a counterparty (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the FDIC-supervised institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), as determined under § 324.132(c)(7), in which the term C in § 324.132(c)(7)(i) equals zero, and, for any counterparty that is not a commercial end-user, multiplied by 1.4. For purposes of this paragraph (c)(4)(ii)(B)(*2*)(*i*), an FDIC-supervised institution may set the value of the term C in § 324.132(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the FDIC-supervised institution in connection with the client-facing derivative transactions within the netting set; and

(*ii*) An FDIC-supervised institution may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 324.132(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

* * * * *

■ 15. Section 324.32 is amended by revising paragraph (f)(1) to read as follows:

§ 324.32 General risk weights.

* * * * *

(f) * * * (1) An FDIC-supervised institution must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraphs (f)(2) and (f)(3) of this section.

* * * * *

§ 324.37 [Amended]

■ 16. Section 324.37 is amended by, in paragraph (c)(2)(i)(B), removing ''§ 324.34(a)(1) or (2)'' and adding in its place ''§ 324.34(b)(1) or (2).''

■ 17. Amend § 324.132 by:

■ a. In paragraphs (c)(8)(iii) and (iv), and (c)(9)(i), removing ''Table 2'' and adding in its place ''Table 3''; and

■ b. Revising paragraphs (c)(9)(ii)(A)(*1*) and (c)(9)(iv)(A)(*3*).

The revisions read as follows:

§ 324.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(c) * * *

(9) * * *

(ii) * * *

(A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$\text{Supervisory duration} = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)}-e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date of the derivative contract.

* * * * *

(iv) * * *

(A) * * *

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a netting set subject to more than two outstanding disputes over margin that lasted longer than the MPOR over the previous two quarters, the applicable floor is twice the amount provided in paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section.

* * * * *

■ 18. Section 324.133 is amended by revising paragraphs (d)(4) and (5), (d)(6) introductory text, and (d)(6)(i) through (iii) to read as follows:

§ 324.133 Cleared transactions.

* * * * *

(d) * * *

(4) *Capital requirement for default fund contributions to a QCCP.* A clearing member FDIC-supervised institution's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP}+DF^{pref}_{CCPCM}}\right); 0.16\ percent * DF^{pref}\}$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

DF^{pref} is the prefunded default fund contribution of the clearing member FDIC-supervised institution to the QCCP;

DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the QCCP; and

DF^{pref}_{CCPCM} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, an FDIC-supervised institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the FDIC-supervised institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the FDIC-supervised institution, is equal to:

$K_{CCP} = \Sigma_{CMi}\ EAD_i * 1.6\ percent$

Where:

$_{CMi}$ is each clearing member of the QCCP; and

EAD_i is the exposure amount of the QCCP to each clearing member of the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a QCCP to a clearing member.* (i) The EAD of a QCCP to a clearing member is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the QCCP and the clearing member that are cleared transactions and any guarantees that the clearing member has provided to the QCCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the exposure amount of the QCCP to the clearing member for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 324.132(c) (or, with respect to a QCCP located outside the United States, under a substantially identical methodology in effect in the jurisdiction) using a value of 10 business days for purposes of § 324.132(c)(9)(iv); less the value of all collateral held by the QCCP posted by the clearing member or a client of the clearing member in connection with a derivative contract for which the clearing member has provided a guarantee to the QCCP and the amount of the prefunded default fund contribution of the clearing member to the QCCP.

(iii) With respect to any repo-style transactions between the QCCP and a clearing member that are cleared transactions, EAD is equal to:

$EAD_I = \max\{EBRM_I - IM_i - DF_I; 0\}$

Where:

$EBRM_i$ is the exposure amount of the QCCP to each clearing member for all repo-style transactions between the QCCP and the clearing member, as determined under § 324.132(b)(2) and without recognition of the initial margin collateral posted by the clearing member to the QCCP with respect to the repo-style transactions or the prefunded default fund contribution of the clearing member institution to the QCCP;

IM_i is the initial margin collateral posted by each clearing member to the QCCP with respect to the repo-style transactions; and

DF_i is the prefunded default fund contribution of each clearing member to the QCCP that is not already deducted in paragraph (d)(6)(ii) of this section.

* * * * *

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on or about July 31, 2020.

James P. Sheesley,

Acting Assistant Secretary.

[FR Doc. 2020–17744 Filed 9–16–20; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0560; Product Identifier 2018–CE–056–AD; Amendment 39–21255; AD No. 2020–19–12]

RIN 2120–AA64

Airworthiness Directives; Glasflugel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–21–04 for Glasflugel Models Club Libelle 205, H 301 ''Libelle,'' H 301B ''Libelle,'' Kestrel, Mosquito, Standard ''Libelle,'' and Standard Libelle-201B gliders. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as jamming between the double two-ring end of the towing cable and the deflector angles of the center of gravity (C.G.) release mechanism. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 13, 2018 (83 FR 53573, October 24, 2018).

ADDRESSES: For service information identified in this final rule, contact Glasfaser Flugzeug-Service GmbH, Hansjorg Streifeneder, Hofener Weg 61, 72582 Grabenstetten, Germany; telephone: +49 (0)7382/1032; fax: +49 (0)7382/1629; email: *info@streifly.de;* internet: *https://www.streifly.de/kontakt-e.htm.* You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0560.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0560; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by removing AD 2018–21–04, Amendment 39–19462 (83 FR 53573, October 24, 2018) (''AD 2018–21–04'') and adding a new AD. AD 2018–21–04 applied to Glasflugel Models Club Libelle 205, H 301 ''Libelle,'' H 301B ''Libelle,'' Kestrel, Mosquito, Standard ''Libelle,'' and Standard Libelle-201B gliders and required inspecting the distance between the deflector-angles of the C.G. release mechanism and revising the operations section of the sailplane flight manual (SFM) before the next winch launch. The NPRM published in the **Federal Register** on August 5, 2019 (84 FR 37974).

AD 2018–21–04 was based on MCAI originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. EASA issued Emergency AD No. 2018–0143–E, dated July 6, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Jamming between the double two ring end of the towing cable and the deflector angles of the C.G. release mechanism was reported. Subsequent investigation identified incorrect geometry of the deflector angles of the affected part as likely cause of the jamming.
>
> This condition, if not detected and corrected, could lead to failure to disconnect the towing cable, possibly resulting in reduced or loss of control of the sailplane.
>
> To address this potential unsafe condition, Glasfaser Flugzeug-Service GmbH issued the TN [Technical Note] to provide inspection instructions and corrective action.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the affected part, and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires amendment of the sailplane Aircraft Flight Manual (AFM).

You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0560.

The FAA issued AD 2018–21–04 as an interim action to address the immediate need for the initial inspection of the distance between the deflector-angles of the C.G. release mechanism, any necessary corrective action, and the revision of the flying operations section of the SFM. In the NPRM, the FAA proposed to supersede AD 2018–21–04 to address the long-term need to repeat the inspection of the C.G. release mechanism for the distance between the deflector-angles at intervals not to exceed 12 months.

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Glasfaser-Flugzeug-Service GmbH Technical Note No. 5–2018, dated June 25, 2018, which is incorporated by reference in AD 2018–21–04. The service information provides instructions for measuring the distance between the deflector-angles at the C.G. release and modifying the deflector-angles if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD will affect 177 products of U.S. registry. The FAA also estimates that it would take about 1 work-hour per product to comply with the inspection requirements and revision of the flying operations section of the sailplane flight manual of this AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $15,045, or $85 per product, per inspection cycle.

The FAA estimates that any modification of the deflector-angles that may be necessary as a result of the inspection would take about 4 work-

hours and require parts costing $100, for a cost of $440 per product. The FAA has no way of determining the number of products that may need these actions.

This AD retains the actions of AD 2018–21–04. The estimated costs of the initial inspection, any necessary modification, and revision of the flying operations section of the SFM remain the same as AD 2018–21–04 and do not impose an additional burden beyond the cost of repeating the inspection every 12 months.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2018–21–04, Amendment 39–19462 (83 FR 53573, October 24, 2018); and

■ b. Adding the following new AD:

2020–19–12 Glasflugel: Amendment 39–21255; Docket No. FAA–2019–0560; Product Identifier 2018–CE–056–AD.

(a) Effective Date

This AD is effective October 22, 2020.

(b) Affected ADs

This AD replaces AD 2018–21–04, Amendment 39–19462 (83 FR 53573, October 24, 2018) (''AD 2018–21–04'').

(c) Applicability

This AD applies to Glasflugel Models Club Libelle 205, H 301 ''Libelle,'' H 301B ''Libelle,'' Kestrel, Mosquito, Standard ''Libelle,'' and Standard Libelle-201B gliders, certificated in any category, with a center of gravity (C.G.) tow release installed.

(d) Subject

Air Transport Association of America (ATA) Code 25: Equipment/Furnishing.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as jamming between the double two-ring end of the towing cable and the deflector angles of the C.G. release mechanism. The FAA is issuing this AD to prevent failure of the towing cable to disconnect, which could result in reduced or loss of control of the glider or the cable breaking and causing injury to people on the ground.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3) of this AD.

(1) Before the next winch launch after November 13, 2018 (the effective date of AD 2018–21–04) and then within 30 days after the effective date of this AD or 12 months after the initial inspection, whichever occurs later, and thereafter at intervals not to exceed 12 months, inspect the distance between the deflector-angles by following paragraph 1 in the Actions section of Glasfaser-Flugzeug-Service GmbH Technical Note No. 5–2018, dated June 25, 2018.

(2) If the distance is less than 36 mm during any inspection required in paragraph (f)(1) of this AD, before the next winch launch, do the corrective action in paragraph 2 in the Actions section of Glasfaser-Flugzeug-Service GmbH Technical Note No. 5–2018, dated June 25, 2018.

(3) Before the next winch launch after November 13, 2018 (the effective date of AD 2018–21–04), revise the flying operations section of the sailplane flight manual by inserting the text in paragraph (f)(3)(i) of this AD into the winch tow section.

(i) Winch launching is permissible only with a connecting ring pair that conforms to aeronautical standard LN 65091.

(ii) This action may be done by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD by following 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(g) Alternative Methods of Compliance

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Jim Rutherford, Aerospace Engineer, FAA, General Aviation & Rotorcraft, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) Related Information

Refer to MCAI EASA AD 2018–0143–E, dated July 6, 2018 for related information. You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0560.

(i) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 13, 2018 (83 FR 53573, October 24, 2018).

(i) Glasfaser-Flugzeug-Service GmbH Technical Note No. 5–2018, dated June 25, 2018.

(ii) [Reserved]

(4) For service information identified in this AD, contact Glasfaser Flugzeug-Service GmbH, Hansjorg Streifeneder, Hofener Weg 61, 72582 Grabenstetten, Germany; phone: +49 (0)7382/1032; fax: +49 (0)7382/1629; email: *info@streifly.de;* internet: *https://www.streifly.de/kontakt-e.htm.*

(5) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. In addition, you can access this service information on the internet at *https://www.regulations.gov* by

searching for and locating Docket No. FAA–2019–0560.

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

Issued on September 10, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–20439 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 105

[Docket ID: DoD–2019–OS–0084]

RIN 0790–AK82

Sexual Assault Prevention and Response Program Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense's (DoD's) duplicative regulation concerning the Sexual Assault Prevention and Response Program (SAPR) Procedures. On July 15, 2020, DoD published a single revised DoD-level SAPR Program rule, which finalized two previously published interim final rules. The revision deleted all guidance internal to DoD and incorporated from this part those policy provisions directly affecting DoD's obligations to provide sexual assault prevention and response (SAPR) services to certain members of the public who are adult victims of sexual assault. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Diana Rangoussis, Senior Policy Advisor, Sexual Assault Prevention and Response Office (SAPRO), (571)372–2648.

SUPPLEMENTARY INFORMATION: DoD now has a single sexual assault prevention and response (SAPR) rule at 32 CFR part 103 (85 FR 42707–42724) that incorporates those policy provisions from 32 CFR part 105 that directly affect DoD's obligations to provide SAPR services to certain members of the public who are adult victims of sexual assault. 32 CFR 103 will be the only part that outlines the Department's obligations to provide SAPR services to certain members of the public. The content of 32 CFR part 105, ''Sexual Assault Prevention and Response Program Procedures,'' last updated on September 27, 2016 (81 FR 66427), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are now reflected in another CFR part, 32 CFR part 103, or are publicly available on the Department's website. The Department's internal policies and procedures are published in DoD Directive 6495.01, ''Sexual Assault Prevention and Response (SAPR) Program'' (last updated April 11, 2017, and available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/649501p.pdf*), and DoD Instruction 6495.02, ''Sexual Assault Prevention and Response (SAPR) Program Procedures,'' (last updated May 24, 2017, and available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502p.pdf*).

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

List of Subjects in 32 CFR Part 105

Crime, Health, Military personnel, Reporting and recordkeeping requirements.

PART 105—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 105 is removed.

Dated: August 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–18338 Filed 9–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 327

[Docket ID: DOD–2019–OS–0080]

RIN 0790–AK72

Defense Commissary Agency Privacy Act Program

AGENCY: Defense Commissary Agency, Defense Department (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Commissary Agency Privacy Act Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which implements the Privacy Act and establishes an agency-wide privacy program that serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and should be removed from the CFR.

DATES: This rule is effective on September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Ralph J. Tremaglio, Senior Agency Official for Privacy at 804–734–8000, Ext. 48116.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The Defense Commissary Agency Privacy Act Program regulation at 32 CFR part 327, last updated on June 28, 2000 (65 FR 39806), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. The Defense Commissary Agency will publish any future internal policy implementing the Privacy Act in DeCA Directive 80–21, ''Defense Commissary Agency Privacy Program,'' April 15, 2010 (available at *https://onenet.commissaries.com/documents/browse-documents?documenttype=57*).

This rule is one of 20 separate DoD Component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating separate component

Privacy Act programs and reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published at 84 FR 14728.

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

List of Subjects in 32 CFR Part 327 Privacy.

PART 327—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 327 is removed.

Dated: August 19, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–18522 Filed 9–16–20; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2019–0596; FRL–10013–34]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (20–1.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs) and are subject to Orders issued by EPA pursuant to TSCA. This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. The required notification initiates EPA's evaluation of the chemical under the conditions of use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required as a result of that determination.

DATES: This rule is effective on November 16, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (EST) on October 1, 2020.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* William Wysong, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0596, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) for chemical substances which were the subject of PMNs P-14-865, P-15-54, P-16-583, P-17-193, P-17-221, P-17-282, P-17-334, P-17-386, P-18-12, P-18-18, P-18-42, P-18-52, P-18-53, P-18-62, P-18-74, P-18-75, P-18-160, P-18-237, P-18-287, P-18-292, P-19-51, P-19-55, and P-19-159.

Previously, in the **Federal Register** of May 4, 2020 (85 FR 26419) (FRL–10007–65), EPA proposed SNURs for these chemical substances and established the record for these SNURs in the docket under docket ID number EPA–HQ–OPPT–2019–0596. That docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received.

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements,

exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

When the Agency issues an order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the TSCA Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received five comments on the proposed rule: Three from identifying entities and two that were anonymous. The Agency's responses are presented in the Response to Public Comments document that is available in the docket for this rule. EPA made no changes to the rule provisions based on these comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as confidential business information (CBI)).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of these rules.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

These final rules include PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The final SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL). The comprehensive NCELs provisions in TSCA Orders include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA Order.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs and as further discussed in Unit IV. of the proposed rule, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. Based on such findings, TSCA Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs because the Agency wants to:

- Receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins;
- Have an opportunity to review and evaluate data submitted in a SNUN

before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use; and

• Be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under section TSCA 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA Orders have been issued for all the chemical substances that are the subject of this rule, and the PMN submitters are prohibited by the TSCA Orders from undertaking activities which will be designated as significant new uses. The identities of 18 of the 24 chemical substances subject to this rule have been claimed as confidential (per 40 CFR 720.85). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated May 4, 2020 (the date of public release of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of that date, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, TSCA order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed in this document. Descriptions are provided for informational purposes. The information identified in Unit IV. of the proposed rule will be potentially useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In some of the TSCA Orders for the chemical substances identified in this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same production volume limits as the TSCA Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the proposed rule may not be the only means of addressing the potential risks of the chemical substance associated with the designated significant new uses. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on the following:

• Human exposure and environmental release that may result from the significant new use of the chemical substances.

• Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures, a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0596.

XII. Statutory and Executive Order Reviews

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

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

This action establishes SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), because this action is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The information collection requirements associated with SNURs have already been approved by OMB under the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This rule does not impose any burden requiring additional OMB approval.

The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register,** are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. The Information Collection Request (ICR) covering the SNUR activities was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN. Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

D. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, EPA has concluded that no small or large entities presently engage in such

activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, EPA received 7 SNUNs in Federal fiscal year (FY) 2013, 13 in FY2014, 6 in FY2015, 10 in FY2016, 14 in FY2017, and 11 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

E. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

F. Executive Order 13132: Federalism

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

G. Executive Order 13175: Consultation and Coordination With Indian Tribe Governments

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

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

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

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

XIII. Congressional Review Act

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

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

Dated: August 20, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR parts 9 and 721 as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

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

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11466 through 721.11489 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11466	2070–0012
721.11467	2070–0012
721.11468	2070–0012
721.11469	2070–0012
721.11470	2070–0012
721.11471	2070–0012
721.11472	2070–0012
721.11473	2070–0012
721.11474	2070–0012
721.11475	2070–0012
721.11476	2070–0012

40 CFR citation	OMB control No.
721.11477	2070–0012
721.11478	2070–0012
721.11479	2070–0012
721.11480	2070–0012
721.11481	2070–0012
721.11482	2070–0012
721.11483	2070–0012
721.11484	2070–0012
721.11485	2070–0012
721.11486	2070–0012
721.11487	2070–0012
721.11488	2070–0012
721.11489	2070–0012

* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

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

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

■ 4. Add §§ 721.11466 through 721.11489 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

721.11466 Aromatic amide oxime (generic).
721.11467 Carbon nanotubes (generic).
721.11468 Aromatic hydrocarbon resin (generic).
721.11469 Pentaerythritol ester of mixed linear and branched carboxylic acids (generic) (P-17-193, chemical A).
721.11470 Dipentaerythritol ester of mixed linear and branched carboxylic acids (generic) (P-17-193, chemical B).
721.11471 Alkylheterocyclic amine blocked isocyanate, alkoxysilane polymer (generic).
721.11472 Isocyanic acid, polymethylenepolyphenylene ester, caprolactam- and phenol-blocked.
721.11473 Benzamide, 2-(trifluoromethyl)-.
721.11474 Cashew, nutshell liq. polymer with formaldehyde, phenol and resorcinol.
721.11475 Polyester polyol (generic).
721.11476 Fluorinated acrylate, polymer with alkyloxirane homopolymer monoether with alkanediol mono(2-methyl-2-propenoate), tert-Bu 2-ethylhexaneperoxoate-initiated (generic).
721.11477 2,5-Furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-hydroxyethyl acrylate- and 2-hydroxyethyl methacrylate-blocked.
721.11478 Perfluoroalkyl ethyl- and vinyl-modified organopolysiloxane (generic).
721.11479 Perfluoroalkyl ethyl- and vinyl-modified organopolysiloxane (generic).
721.11480 Oxirane, 2,2'-[cyclohexylidenebis(4,1-phenyleneoxymethylene)]bis-.
721.11481 Saturated fatty acid, reaction products with cadmium zinc selenide sulfide and polymeric amine (generic).
721.11482 Saturated fatty acid, reaction products with cadmium zinc selenide sulfide, alkylamine and polymeric amine (generic).
721.11483 Heteropolycyclic, halo substituted alkyl substituted- diaromatic amino substituted carbomonocycle, halo substituted alkyl substituted heteropolycyclic, tetraaromatic metalloid salt (1:1) (generic).
721.11484 Alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-, and dialkylheteromonocycle-blocked (generic).
721.11485 Alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-blocked (generic).
721.11486 Synthetic oil from tires (generic).
721.11487 1,3-Propanediamine, N1,N1-dimethyl-, polymers with alkylene glycol ether with alkyltriol (3:1) mixed acrylates and adipates, and alkylene glycol monoacrylate ether with alkyltriol (3:1) (generic).
721.11488 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with oxirane, 4-(dimethylamino)benzoate.
721.11489 Titanium (4+) hydroxyl-alkylcarboxylate salt complex (generic).

* * * * *

§ 721.11466 Aromatic amide oxime (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic amide oxime (PMN P-14-865) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) through (3), and (6), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), concentration is set at 1.0%.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=30.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11467 Carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbon nanotubes (PMN P-15-54) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance that have been (i) embedded or incorporated into a polymer matrix that itself has been reacted (cured) or (ii) embedded in a permanent solid polymer form that is not intended to undergo further processing, except mechanical processing.

(2) The significant new uses are:

(i) *Workplace protection.* Requirements as specified in § 721.63(a)(1), (2)(i) and (ii), and (3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), particulate (including solids or liquid droplets).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (chemical intermediate to manufacture functionalized carbon nanotubes by oxidation with nitric acid; additive in rubber polymers to improve mechanical/physical/chemical/electrical properties; additive in resin polymers to improve mechanical/physical/chemical/electrical properties; additive in metals to improve electrical/thermal properties; additive in ceramics to improve mechanical/electrical/thermal properties; semi-conductor, conductive, or resistive element in electronic circuitry and devices; electric

collector element or electrode in energy devices; photoelectric or thermoelectric conversion elements in energy devices; catalyst support element or catalytic electrode for use in energy devices; additive for transparency and conductivity in electronic devices; and electro-mechanical element in actuator, sensor, or switching devices).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (2), (b)(1) and (2), and (c)(1) and (2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (i) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11468 Aromatic hydrocarbon resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic hydrocarbon resin (PMN P-16-583) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (hot-melt sealant for motor vehicle lamps). It is a significant new use to manufacture the PMN substance with an average number molecular weight of less than 1000 grams per mole.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11469 Pentaerythritol ester of mixed linear and branched carboxylic acids (generic) (P-17-193, chemical A).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as pentaerythritol ester of mixed linear and branched carboxylic acids (PMN P-17-193, chemical A) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=330.

(ii) [Reserved]

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11470 Dipentaerythritol ester of mixed linear and branched carboxylic acids (generic) (P-17-193, chemical B).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dipentaerythritol ester of mixed linear and branched carboxylic acids (PMN P-17-193, chemical B) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=330.

(ii) [Reserved]

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11471 Alkylheterocyclic amine blocked isocyanate, alkoxysilane polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylheterocyclic amine blocked isocyanate, alkoxysilane polymer (PMN P-17-221) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of the TSCA Order do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (3) and (6) (particulate), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(i) and (ii), (2)(i) through (iii) and (v), and (5). For purposes of § 721.72(e), concentration is set at 1.0%. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to formulate the PMN to a concentration greater than 10%.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii).

§ 721.11472 Isocyanic acid, polymethylenepolyphenylene ester, caprolactam- and phenol-blocked.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as isocyanic acid, polymethylenepolyphenylene ester, caprolactam- and phenol-blocked (PMN P-17-282, CAS No. 2093945–13–0) is

subject to reporting under this section for the significant new uses described paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner or method that generates inhalation exposure to phenol or caprolactam.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=1.

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11473 Benzamide, 2-(trifluoromethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzamide, 2-(trifluoromethyl)- (PMN P-17-334, CAS No. 360–64–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iv), (3), (4), (6)(v) and (vi), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(6), particulate applies. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(iii) through (v), and (ix), (2)(i) through (iii) and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), concentration is set at 0.1%. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (g) and (y)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=39.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11474 Cashew, nutshell liq. polymer with formaldehyde, phenol and resorcinol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cashew nutshell liq. polymer with formaldehyde, phenol and resorcinol (PMN P-17-386, CAS No. 2044014–81–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (5), (6)(v) and (vi), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), particulate (including combination gas/vapor and particulate). For purposes of § 721.63(b), concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(i), (2)(i) and (ii), (iv) and (v), (4)(iii), and (5). For purposes of § 721.72(e), concentration is set at 1.0%. For purposes of § 721.72(g)(1) skin and respiratory sensitization. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture the substance for more than one year.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11475 Polyester polyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyester polyol (PMN P-18-12) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=1.

(ii) [Reserved]

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11476 Fluorinated acrylate, polymer with alkyloxirane homopolymer monoether with alkanediol mono(2-methyl-2-propenoate), tert-Bu 2-ethylhexaneperoxoate-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fluorinated acrylate, polymer with alkyloxirane homopolymer monoether with alkanediol mono(2-methyl-2-propenoate), tert-Bu 2-ethylhexaneperoxoate-initiated (PMN P-18-18) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (t) and (y)(1).

(ii) *Releases to water.* Requirements as specified in § 721.90(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11477 2,5-Furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7ahexahydro- 4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate, polymer with 5-isocyanato-l-(isocyanatomethyl)-1,3, 3-trimethylcyclohexane, 2-hydroxyethyl acrylate- and 2-hydroxyethyl methacrylate-blocked.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,5-furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7ahexahydro- 4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate, polymer with 5-isocyanato-l-(isocyanatomethyl)-1,3, 3-trimethylcyclohexane, 2-hydroxyethyl acrylate- and 2-hydroxyethyl methacrylate-blocked (PMN P-18-42, CAS No. 2245262–16–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) through (iv) and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(i) and (ii), (iv), (vii) and (ix), (2)(i) through (iii) and (v), and (5). For purposes of § 721.72(g)(1) eye irritation. For purposes of § 721.72(g)(2) avoid eye contact. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii).

§ 721.11478 Perfluoroalkyl ethyl- and vinyl-modified organopolysiloxane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl ethyl- and vinyl-modified organopolysiloxane (PMN P-18-52) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) through (6) and (c). When determining which persons are reasonably likely to be exposed as required by § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000). For purposes of § 721.63(a)(6) combination gas/vapor and particulate.

(A) As an alternative to respirator requirements in paragraph (a)(2)(i) of this section, manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0015 mg/m3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(vi), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(g)(1) specific target organ toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0015 mg/m3.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (t) (420 kilograms).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11479 Perfluoroalkyl ethyl- and vinyl-modified organopolysiloxane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl ethyl- and vinyl-modified organopolysiloxane (PMN P-18-53) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), and (c). When determining which persons are reasonably likely to be exposed as

required by § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), combination gas/vapor and particulate.

(A) As an alternative to respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0015 mg/m3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(vi), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(g)(1) specific target organ toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0015 mg/m3.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (t) (336 kilograms).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 1721.185 apply to this section.

§ 721.11480 Oxirane, 2,2′-[cyclohexylidenebis(4,1-phenyleneoxymethylene)]bis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical identified as oxirane, 2,2′-[cyclohexylidenebis(4,1-phenyleneoxymethylene)]bis- (PMN P-18-62, CAS No. 13446–84–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), particulate (including solids or liquid droplets). For purposes of § 721.63(b), concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), and (g)(1)(vi), (vii), (2)(i) through (iii) (use respiratory protection when spraying), (v), (3)(i) and (ii), (4)(i), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(g)(1) specific target organ toxicity. For purposes of § 721.72(e), concentration is set at 0.1%.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture or process the PMN substance in any manner which generates inhalation exposures.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=1.

(b) *Specific requirements.* The provision of subpart A of this part apply to this section as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11481 Saturated fatty acid, reaction products with cadmium zinc selenide sulfide and polymeric amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical identified generically as saturated fatty acid, reaction products with cadmium zinc selenide sulfide and polymeric amine (PMN P-18-74) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) and (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(6), particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1)(i) and (vii), (2)(i) through (iii), and (v), (3)(i) and (ii), (4)(i) and (iii) and (5). For purposes of § 721.72(g)(1) pulmonary toxicity, eye damage, specific target organ toxicity, and skin sensitization. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (chemical intermediate for a quantum dot used as an optical down-converter (50%), and quantum dot in an optical down-converter (50%)). It is a significant new use to manufacture, process, or use the PMN substance in other than a liquid formulation. It is a significant new use to manufacture or process the PMN substance in any manner which generates inhalation exposures. It is a significant new use to manufacture the PMN substance with a cadmium percentage greater than the confidential level identified in the TSCA Order.

(iv) *Disposal.* It is a significant new use to dispose of the PMN substance in any manner other than by incineration in a permitted hazardous waste incinerator.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provision of subpart A of this part apply to this section as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11482 Saturated fatty acid, reaction products with cadmium zinc selenide sulfide, alkylamine and polymeric amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical identified generically as saturated fatty acid, reaction products with cadmium zinc selenide sulfide, alkylamine and polymeric amine (PMN P-18-75) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) and (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(6), particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1)(i) and (vii), (2)(i) through (iii), and (v), (3)(i) and (ii), (4)(i) and (iii) and (5). For purposes of § 721.72(g)(1) pulmonary toxicity, eye damage, specific target organ toxicity, and skin sensitization. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k)(quantum dot in an optical down-converter). It is a significant new use to manufacture, process, or use the PMN substance in other than a liquid formulation. It is a significant new use to manufacture or process the PMN substance in any manner which generates inhalation exposures. It is a significant new use to manufacture the PMN substance with a cadmium percentage greater than the confidential value stated in the TSCA Order.

(iv) *Disposal.* It is a significant new use to dispose of the PMN substance in any manner other than by incineration in a permitted hazardous waste incinerator.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provision of subpart A of this part apply to this section as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11483 Heteropolycyclic, halo substituted alkyl substituted-diaromatic amino substituted carbomonocycle, halo substituted alkyl substituted heteropolycyclic, tetraaromatic metalloid salt (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteropolycyclic, halo substituted alkyl substituted- diaromatic amino substituted carbomonocycle, halo substituted alkyl substituted heteropolycyclic, tetraaromatic metalloid salt (1:1) (PMN P-18-160) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) through (iv), and (3) through (6). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (2)(i) through (v), (3)(i) and (ii) and (4)(iii). For purposes of § 721.72(g)(1) acute toxicity, neurotoxicity, photosensitization, and eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (t), and (w)(1), (3) and (4). It is a significant new use to manufacture the substance for more than 18 months.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11484. Alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-, and dialkylheteromonocycle-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-, and dialkylheteromonocycle-blocked (PMN P-18-237) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the

substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner or method that generates dust, spray, vapor, mist, or aerosol.

(ii) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11485 Alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-blocked (PMN P-18-292) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner or method that generates dust, spray, vapor, mist, or aerosol.

(ii) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N = 1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11486 Synthetic oil from tires (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as synthetic oil from tires (PMN P-18-287) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (o).

(ii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i) and (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11487 1,3-Propanediamine, N1,N1-dimethyl-, polymers with alkylene glycol ether with alkyltriol (3:1) mixed acrylates and adipates, and alkylene glycol monoacrylate ether with alkyltriol (3:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 1,3-propanediamine, N1,N1-dimethyl-, polymers with alkylene glycol ether with alkyltriol (3:1) mixed acrylates and adipates, and alkylene glycol monoacrylate ether with alkyltriol (3:1) (PMN P-19-51) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), and (g)(1)(i) and (iv), (2)(i) through (v), (3)(i) and (ii), (4)(i) and (ii) and (5). For purposes of § 721.72(g)(1) eye irritation, skin sensitization, and respiratory sensitization. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), concentration is set at 0.1%.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N=3.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), (f) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11488 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with oxirane, 4-(dimethylamino)benzoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with oxirane, 4-(dimethylamino)benzoate (PMN P-19-55, CAS No. 2067275–86–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) if this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)(photo initiator within UV curable coating/ink formulations). It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N = 12.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 1721.185 apply to this section.

§ 721.11489 Titanium (4+) hydroxyl-alkylcarboxylate salt complex (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as titanium (4+) hydroxyl-alkylcarboxylate salt complex (PMN P-19-159) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner or method that generates inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4) where N = 1.

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2020–18883 Filed 9–16–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–5533–N]

Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Payment advisory.

SUMMARY: This advisory is to alert certain clinicians who are Qualifying APM participants (QPs) and eligible to receive an Alternative Payment Model (APM) Incentive Payment that CMS does not have the current billing information needed to disburse the payment. This advisory provides information to these clinicians on how to update their billing information to receive this payment.

DATES: This advisory is effective on September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Tanya Dorm, (410) 786–2206.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare Quality Payment Program, an eligible clinician who participates in an Advanced Alternative Payment Model (APM) and meets the applicable payment amount or patient count thresholds for a performance year is a Qualifying APM Participant (QP) for that year. An eligible clinician who is a QP for a year based on their performance in a QP Performance Period earns a 5 percent lump sum APM Incentive Payment that is paid in a payment year that occurs 2 years after the QP Performance Period. The amount of the APM Incentive Payment is equal to 5 percent of the estimated aggregate payments for covered professional services furnished by the QP during the calendar year immediately preceding the payment year.

II. Provisions of the Advisory

The Centers for Medicare & Medicaid Services (CMS) has identified those eligible clinicians who earned an APM Incentive Payment in CY 2020 based on their CY 2018 QP status.

When CMS disbursed the CY 2020 APM Incentive Payments, CMS was unable to verify current Medicare billing information for some QPs and was therefore unable to issue payment. In order to successfully disburse the APM Incentive Payment, CMS is requesting assistance in identifying current Medicare billing information for these QPs.

CMS has compiled a list of QPs we have identified as having unverified billing information. These QPs, and any others who anticipated receiving an APM Incentive Payment but have not, should follow the instructions to provide CMS with updated billing information at the following web address: *https://qpp-cm-prod-content.s3.amazonaws.com/uploads/1112/2020%20APM%20Incentive%20Payment%20Notice.pdf.*

If you have any questions concerning submission of information through the website, please contact the QPP Help Desk at 1–866–288–8292.

All submissions must be received no later than November 13, 2020.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Vanessa Garcia, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2020–20488 Filed 9–14–20; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 25, 27 and 101

[GN Docket No. 18–122; FCC 20–22; FRS 17048]

Expanding Flexible Use of the 3.7 to 4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; corrections and announcement of compliance date.

SUMMARY: In this document, the Commission corrects a typographical error in the *3.7 GHz Report and Order,* FCC 20–22, published on April 23, 2020, and announces that the Office of Management and Budget has approved the information collection requirements associated with the rules adopted in the Federal Communications Commission's *3.7 GHz Report and Order,* requiring the Relocation Payment Clearinghouse and the Relocation Coordinator to each make real-time, public disclosures of the content and timing of and the parties to communications, if any, from or to applicants in the Commission's auction for overlay licenses in the 3.7 GHz Service, and that compliance with the new rules is now required. This document is consistent with the *3.7 GHz Report and Order,* which states that the Commission will publish a document in the **Federal Register** announcing a compliance date for the new rule sections.

DATES: *Effective date:* The corrections are effective September 17, 2020.

Compliance date: Compliance with 47 CFR 27.1413(c)(6) and 27.1414(b)(4)(i), published at 85 FR 22804 on April 23, 2020, is required on September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Anna Gentry, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–7769 or *Anna.Gentry@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document corrects a typographical error

in the *3.7 GHz Report and Order,* FCC 20–22, published at 85 FR 22804 on April 23, 2020, referencing 47 CFR 27.1413(c)(7) as the rule section for which OMB approval was required, rather than 47 CFR 27.1413(c)(6).

In FR Doc. 2020–05164 appearing on page 22804 in the **Federal Register** of Thursday, April 23, 2020, the following corrections are made:

1. On page 22804, in the first column, in the **DATES** section, the reference ''27.1413(a)(2) and (3), (b), and (c)(3) and (7)'' is corrected to read ''27.1413(a)(2) and (3), (b), and (c)(3) and (6).''

2. On page 22804, in the third column, in the first paragraph under the heading ''Paperwork Reduction Act,'' the reference ''27.1413(a)(2) and (3), (b), and (c)(3) and (7)'' is corrected to read ''27.1413(a)(2) and (3), (b), and (c)(3) and (6).''

3. On page 22860, in the third column, under the section heading ''Ordering Clauses,'' the reference ''27.1413(a)(2) and (3), (b), and (c)(3) and (7)'' is corrected to read ''27.1413(a)(2) and (3), (b), and (c)(3) and (6)'' in both instances where it appears in paragraph 428.

This document also announces that the Office of Management and Budget (OMB) approved the information collection requirements in 47 CFR 27.1413(c)(6) and 27.1414(b)(4)(i), on August 31, 2020. These rules were adopted in the *3.7 GHz Report and Order,* FCC 20–22, published at 85 FR 22804 on April 23, 2020. The Commission publishes this document as an announcement of the compliance date for these new rules. OMB approval for all other new or amended rules for which OMB approval is required will be requested, and compliance is not yet required for those rules. Compliance with all new or amended rules adopted in the *3.7 GHz Report and Order* that do not require OMB approval is required as of June 22, 2020, *see* 85 FR 22804 (Apr. 23, 2020).

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW, Washington, DC 20554, regarding OMB Control Number 3060–1276. Please include the OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received final OMB approval on May 5, 2020, for the information collection requirements contained in 47 CFR 27.1413(c)(6) and 27.1414(b)(4)(i). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirements in 47 CFR 27.1413(c)(6) and 27.1414(b)(4)(i), is 3060–1276.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1276.

OMB Approval Date: August 31, 2020.

OMB Expiration Date: August 31, 2023.

Title: 3.7 GHz Band Relocation Coordinator and Relocation Payment Clearinghouse Real-Time Disclosure of Communications Required by Sections 27.1413(c)(6) and 27.1414(b)(4)(i).

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2 respondents; 12 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Total Annual Burden: 12 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collected under this collection will be made publicly available.

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Commission adopted a Report and Order, FCC 20–22 (*3.7 GHz Report and Order*) in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-Band. The 3.7–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. The *3.7 GHz Report and Order* calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and making the lower 280 megahertz (3.7–3.98 GHz) available for flexible-use throughout the contiguous United States through a Commission-administered public auction of overlay licenses in the 3.7 GHz Service that is scheduled to occur later this year, with the 20 megahertz from 3.98–4.0 GHz reserved as a guard band. The Commission adopted a robust transition schedule to achieve an expeditious relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. The *3.7 GHz Report and Order* establishes a deadline of December 5, 2025, for full relocation to ensure that all FSS operations are cleared in a timely manner, but provides an opportunity for accelerated clearing of the band by allowing incumbent space station operators, as defined in the *3.7 GHz Report and Order,* to commit to voluntarily relocate on a two-phased accelerated schedule (with additional obligations and incentives for such operators), with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.

The Commission concluded in the *3.7 GHz Report and Order* that a neutral, independent third-party Relocation Payment Clearinghouse (RPC) should be established to administer the cost-related aspects of the transition in a fair, transparent manner, mitigate financial disputes among stakeholders, and collect and distribute payments in a timely manner to transition incumbent space station operators out of the 3.7–3.98 GHz band. The Commission also concluded that a Relocation Coordinator (RC) should be appointed to ensure that all incumbent space station operators

are relocating in a timely manner, and to be responsible for receiving notice from earth station operators or other satellite customers of any disputes related to comparability of facilities, workmanship, or preservation of service during the transition and notify the Commission of disputes and recommendations for resolution.

To protect the fair and level playing field for applicants to participate in the Commission's auction for overlay licenses in the 3.7 GHz Service, the RPC and the RC are each required to make real-time, public disclosures of the content and timing of and the parties to communications, if any, from or to such applicants, as applicants are defined by the Commission's rule prohibiting certain auction-related communications, 47 CFR 1.2105(c)(5)(i), whenever the prohibition in 47 CFR 1.2105(c) applies to competitive bidding for licenses in the 3.7 GHz Service. *See* 47 CFR 27.1413(c)(6), 27.1414(b)(4)(i) (as adopted in the *3.7 GHz Report and Order*). Under this new information collection, the RPC and the RC will each make the required real-time, public disclosure of any such communications, as necessary.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–19687 Filed 9–16–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200911–0240]

RIN 0648–BJ96

Temporarily Increasing the Commercial Trip Limit for South Atlantic Vermilion Snapper and Recreational Bag Limit for Atlantic King Mackerel

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule to revise the commercial trip limit for vermilion snapper in the South Atlantic Region and the recreational bag limit for the Atlantic migratory group of king mackerel (Atlantic king mackerel) in the Atlantic, as requested by the South Atlantic Fishery Management Council (South Atlantic Council). The purpose of this temporary rule is to increase the vermilion snapper commercial trip limit and Atlantic king mackerel recreational bag limits to help address significant economic losses and opportunities for the commercial and recreational fishing sectors that have resulted from recent unforeseen events, including, but not limited to, closures of harbors and boat ramps and other disruptions to, and declines in, market demand for seafood and for-hire trips.

DATES: This temporary rule is effective September 17, 2020, through March 16, 2021.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which includes the South Atlantic Council's letters to NMFS that contain the rationale for the emergency action requests may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/emergency-rule-vermilion-snapper-commercial-trip-limit-atlantic-king-mackerel-recreational.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727–551–5098, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP) and includes vermilion snapper and other snapper-grouper species. The coastal migratory pelagics fishery is managed under the FMP for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (CMP FMP) and includes king mackerel and Spanish mackerel and, in the Gulf of Mexico, cobia. The Snapper-Grouper FMP was prepared by the South Atlantic Council and the CMP FMP was prepared by the South Atlantic Council and the Gulf of Mexico Fishery Management Council (Gulf Council). Both the Snapper-Grouper FMP and the CMP FMP are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Unless otherwise noted, all weights for vermilion snapper are described in gutted weight and all weights for king mackerel are described in both gutted and round weight.

Background

Vermilion Snapper

The South Atlantic Council manages vermilion snapper in Federal waters from the Virginia/North Carolina boundary, south through the Florida Keys in the Atlantic Ocean (as described in 50 CFR 600.105). As revised through Abbreviated Framework 2 to the Snapper-Grouper FMP, the commercial annual catch limit (ACL) for vermilion snapper is 905,442 lb (410,702 kg) for 2020, and 862,558 lb (391,250 kg) for 2021 (84 FR 14021; April 9, 2019). The commercial ACL is annually split equally into a separate commercial quota for two commercial fishing seasons; Season 1 is January–June, and Season 2 is July–December (50 CFR 622.190(a)(4)). The two seasonal quotas combined equal the commercial ACL. Any unused quota from Season 1 transfers during the fishing year to Season 2. There is no provision to allow the carryover of any unused quota at the end of Season 2 to the following fishing year. The current vermilion snapper commercial trip limit was established through Regulatory Amendment 27 to the Snapper-Grouper FMP at 1,000 lb (454 kg) during Seasons 1 and 2, until the respective seasonal quota is reached (85 FR 488, January 27, 2020) (50 CFR 622.191(a)(6)). The latest Southeast Data, Assessment, and Review (SEDAR) stock assessment (SEDAR 55) in 2018 indicated that South Atlantic vermilion snapper is neither overfished nor undergoing overfishing.

King Mackerel

The South Atlantic Council and the Gulf Council jointly manage the CMP FMP, which includes an Atlantic migratory group of king mackerel and a Gulf of Mexico migratory group of king mackerel. Under the CMP FMP, each Council has the authority to develop and approve certain measures for its respective migratory group that are specific to each region. Atlantic king mackerel are managed by the South Atlantic Council in Federal waters from the Connecticut/Rhode Island/New York boundary south to the Miami-Dade/Monroe County, Florida, boundary (as described in 50 CFR 622.369(a)). The recreational ACL for Atlantic king mackerel is 8 million lb (3,628,739 kg) (50 CFR 622.388(b)(2)(i)). As described at 50 CFR 622.382(a)(1)(i)(A) and (B), in Federal waters the recreational bag limit for Atlantic king mackerel is 3-fish per person from the Connecticut/Rhode Island/New York boundary south to the Georgia/Florida boundary and 2-fish per person off Florida. The most recent

update to the latest stock assessment (SEDAR 38 Update) in 2020 indicated that Atlantic king mackerel is neither overfished nor undergoing overfishing.

Council Emergency Action Requests

In June 2020, the South Atlantic Council voted to approve and request two emergency actions. The first request is to increase the commercial trip limit for vermilion snapper from 1,000 lb (454 kg), to 1,500 lb (680 kg), in Federal waters of the South Atlantic Region. The second request is to increase the recreational bag limit for Atlantic king mackerel in Federal waters from 3-fish per person to 4-fish per person from the Connecticut/Rhode Island/New York boundary to the Georgia/Florida boundary, and from 2-fish per person to 4-fish per person from the Georgia/Florida boundary to the Miami-Dade/Monroe County, Florida, boundary.

The commercial landings of vermilion snapper in 2020 are much lower than those observed in 2018 and 2019. Preliminary commercial landings for 2020 show that only 64.5 percent of the vermilion snapper commercial quota for Season 1 has been caught, compared with 88.42 percent of the quota in 2018 and 95.6 percent of the quota in 2019. The unused portion of this year's commercial quota from Season 1 has been added to the commercial quota for Season 2 (50 CFR 622.190(a)(4)(iii)). Consequently, NMFS expects that short-term management changes such as this trip limit increase from 1,000 lb (454 kg), to 1,500 lb (680 kg), should help the commercial sector to harvest a greater amount of the ACL in 2020 and increase the likelihood of achieving optimum yield. NMFS does not expect that an increase of the commercial trip limit to 1,500 lb (680 kg), would result in a commercial closure in 2020 because of reaching the adjusted Season 2 quota. It is possible that continuing the increased commercial trip limit through this emergency rule into Season 1 of the 2021 fishing year may result in an early closure of the commercial sector in Season 1 in 2021, due to the quota being reached more quickly. However, that prediction is very uncertain and depends on whether the current recent unforeseen events will improve or worsen in 2021.

Since 2011, recreational landings of Atlantic king mackerel have averaged less than 40 percent of the recreational ACL. The recreational Atlantic king mackerel landings for the 2020 fishing year are also not expected to reach the recreational ACL of 8 million lb (3,628,739 kg). Because of this, NMFS has determined it is very unlikely that a temporary increase of the recreational bag limit will result in the recreational ACL being exceeded.

Beginning in approximately March 2020, South Atlantic stakeholders have experienced closures of harbors and boat ramps with restricted access to marinas and piers, and other disruptions to, and declines in, the restaurant and seafood retail industry, for-hire trips, and losses to market access. Since both South Atlantic vermilion snapper and Atlantic king mackerel are neither overfished, nor undergoing overfishing, the South Atlantic Council requested NMFS to implement emergency rules to increase both the commercial trip limit for vermilion snapper and the recreational bag limit for Atlantic king mackerel to provide temporary economic relief for the fishers and businesses associated with these fisheries. NMFS has combined these two emergency action requests into a single rulemaking in an effort to reduce the administrative burden and to provide a timelier response to the South Atlantic Council's request.

Criteria and Justification for Emergency Action

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: ''(1) Result from recent, unforeseen events or recently discovered circumstances; and (2) Present serious conservation or management problems in the fishery; and (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.'' NMFS is issuing this emergency rule in compliance with these guidelines to prevent significant direct economic loss and preserve significant economic opportunities that otherwise might be foregone.

At their June 2020 meeting, the South Atlantic Council reviewed information about these fisheries and discussed options to provide relief to commercial and recreational fishermen from economic losses to each sector and associated fishing industries as a result of the recent unforeseen events associated with COVID–19 discussed above that began in approximately March 2020. These unforeseen events have adversely affected commercial and recreational fishermen throughout the South Atlantic Council's jurisdiction for an extended period of time. Commercial and recreational stakeholders informed the South Atlantic Council that the recent events have caused many individuals, businesses and communities to suffer significant economic hardships from lost or reduced income and fishing opportunities.

Commercial fishing activity has been adversely impacted by the loss of markets and the recent events have not allowed the commercial sector to operate normally this year. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for vermilion snapper.

As previously discussed, NMFS has determined that preliminary commercial landings for vermilion snapper as of July 20, 2020, show only 64.5 percent (291,823 lb (132,369 kg)) of the commercial quota of 452,721 lb (205,351 kg) was caught for Season 1 that ended on June 30, 2020, leaving 160,898 lb (72,982 kg) of the Season 1 quota not caught. This unused portion of the quota from Season 1 was added to the quota for Season 2 of 452,721 lb (205,351 kg) resulting in an adjusted Season 2 quota for 2020 of 613,619 lb (278,333 kg) (50 CFR 622.190(a)(4)(iii)). A trip limit, which necessarily restrains harvest under normal conditions, may be overly restrictive when non-fishery related circumstances reduce effort, and may prevent the fishery from achieving OY and result in the loss of economic and social benefits derived from the commercial harvest for vermilion snapper. NMFS estimates that the increase in the commercial trip limit for vermilion snapper would allow fishermen to increase landings in 2020 by approximately 29,300 lb (13,290 kg), which is still well under the adjusted 2020 commercial quota for Season 2, and should not result in an early commercial closure in 2020. The increased trip limit would also increase the likelihood of achieving OY in the fishery.

NMFS estimates that the increased trip limit would result in an aggregate annual increase in ex-vessel revenue of approximately $120,000, applying an average price per pound of $4.10 (2019 dollars) for vermilion snapper. This increase in revenue would accrue to those commercial vessels with Federal snapper-grouper permits that harvest vermilion snapper in excess of the existing commercial trip limit. On average, from 2014 through 2019, there were 215 vessels per year with reported landings of vermilion snapper from the South Atlantic and they earned approximately $63,000 (2019 dollars)

per vessel in annual ex-vessel revenue from all species landings combined. The revenue from the increased trip limit would provide a significant economic benefit to some fishing businesses that have suffered economic hardships from lost or reduced income and fishing opportunities in 2020, by helping them to remain solvent and to recoup some of their lost income. Increased harvest opportunities and greater earning potential per trip may also provide more employment opportunities for crew.

In addition, the increase in revenue assumes prices in 2020 are consistent with recent years and that short-term fluctuations in the daily supply of vermilion snapper would not affect those prices substantially. This assumption is supported by a recent economic assessment of fishery performance conducted by the NMFS Southeast Fisheries Science Center Social Science Research Group that indicated commercial landings of vermilion snapper and associated ex-vessel revenue both declined by 37 percent in the first 6 months of 2020 relative to the same time in 2019, while prices stayed constant. Continuing the commercial trip limit increase through this emergency rule into Season 1 of the 2021 fishing year could result in an early closure of the commercial sector in Season 1 in 2021, but that prediction is very uncertain and depends on whether the current recent unforeseen events will improve or worsen in 2021. NMFS determines that implementing this measure through emergency action would provide more timely and significant economic relief and expanded harvest opportunities to fishers who have been negatively impacted for much of the 2020 fishing year, and that implementing these benefits through emergency action outweighs the value of pursuing this action through the notice and comment rulemaking process.

Recreational fishers have also been adversely affected by recent and unforeseen circumstances. Beginning in approximately March 2020 and continuing in many ways to date, South Atlantic recreational fishers and associated businesses have had restricted access to, and closures of, marinas and piers, along with the drastically decreased ability for recreational fishers to utilize charter vessels and headboats. The charter vessel and headboat (for-hire) industry within the recreational sector has been particularly adversely impacted by these recent events because of the sector's reliance on the tourism trade. Reports from stakeholders, preliminary information on headboat effort reviewed by the South Atlantic Council at their June 2020 meeting, and preliminary effort estimates from the NMFS Southeast Fisheries Science Center all indicate that effort in the for-hire component, in particular, has been severely reduced to date in 2020. For 2020, NMFS estimates that the January through April recreational landings for Atlantic king mackerel are at 70,236 lb (31,859 kg), round weight. In comparison, the recreational landings for March and April combined in 2018 and 2019 were 196,970 lb (89,344 kg), round weight, and 420,713 lb (190,832 kg), round weight, respectively. In addition, headboat landings for Atlantic king mackerel during January through March of 2020 were 9,534 lb (4,325 kg), round weight, when for the same months in 2018 and 2019, headboat landings were 19,664 lb (8,919 kg), round weight, and 42,449 lb (19,255 kg), round weight, respectively.

While the recent unforeseen events discussed above caused for-hire fishing businesses to forego, or have significantly reduced, economic opportunities, the events also caused private recreational fishermen to forego, or have reduced, social opportunities that occur through private fishing trips. NMFS expects that a temporary increase of the recreational bag limit should allow for-hire businesses and recreational fishermen to recover some of these missed and reduced opportunities. Because these recent events also caused serious management problems by making it more difficult to achieve OY for Atlantic king mackerel, the increased bag limit would also increase the likelihood of achieving OY in this fishery.

In addition, NMFS has determined that increasing the recreational bag limit to 4-fish per person throughout the management area for Atlantic king mackerel should not result in an overage of the recreational ACL in 2020 or 2021. NMFS projects the 2020 recreational landings to be 2,322,448 lb (1,053,445 kg), without an increased bag limit, and estimates that increasing the bag limit to 4-fish per person would increase landings by an additional 638,034 lb (289,407 kg) over the course of the 180 days of the emergency rule. With respect to the 2020 fishing year, this results in an additional 432,700 lb (196,269 kg) landed, for an estimation of 2,755,148 lb (1,249,714 kg) for 2020 landings. For the 2021 fishing year, this action would result in an additional 205,334 lb (93,138 kg) landed, resulting in estimated landings of 2,527,782 lb (1,146,582 kg) for 2021. The recreational landings increase of 638,034 lb (289,407 kg) equates to approximately 71,956 additional fish. By increasing the bag limits and applying available willingness to pay estimates for a 3rd and 4th Atlantic king mackerel kept on an angler trip of $70.38 and $51.87 (2019 dollars), respectively, NMFS estimates a total increase in consumer surplus to recreational anglers of approximately $3.7 million to $5 million (2019 dollars). The estimate of increased recreational landings for 2020 would still be less than the recreational ACL of 8.0 million lb (3,628,739 kg). In addition, the increased bag limit would allow more fish on a for-hire trip, which may improve charter vessel and headboat trip productivity and overall efficiency as there would be more fish caught per trip. The bag limit increase could make trips more desirable to private recreational fishermen as well, leading to an increase in demand for trips, and in turn, an increase in net operating revenue for charter vessel and headboat businesses that have undergone recent business losses as a result of the unforeseen circumstances discussed above. Increased recreational bag limits that result in an increased number of private and for-hire trips could also have positive indirect effects on recreational coastal communities by providing more job opportunities for crew and more recreational purchases of bait, tackle, ice, and fuel. As with the vermilion snapper trip limit increase, the South Atlantic Council determined that increasing the Atlantic king mackerel bag limit through emergency action would provide more timely significant economic relief and expanded harvest opportunities and social benefits to fishers, including for-hire businesses and communities, who have been negatively impacted by recent events for much of the 2020 fishing year. NMFS determines that implementing these benefits through emergency action outweighs the value of pursuing this action through the notice and comment rulemaking process.

NMFS has determined that increasing the vermilion snapper commercial trip limit and Atlantic king mackerel recreational bag limit as described meets the requirements of the Magnuson-Stevens Act and NMFS's Policy Guidelines for the Use of Emergency Rules.

Management Measures Contained in this Temporary Rule

This temporary rule would increase the commercial trip limit for vermilion snapper from 1,000 lb (454 kg) to 1,500 lb (680 kg) in Atlantic Federal waters from the Virginia/North Carolina boundary through Florida. This

temporary rule would also increase the Atlantic king mackerel recreational bag limit from 3-fish per person to 4-fish per person in Federal waters from the Connecticut/Rhode Island/New York boundary to the Georgia/Florida boundary, and from 2-fish per person to 4-fish per person in Federal waters from the Georgia/Florida boundary to the Miami-Dade/Monroe County, Florida, boundary. Implementing these measures through emergency action would allow for increased significant economic relief as well as expanded harvest opportunities and social benefits that would otherwise not be realized in time to be of benefit in 2020 to South Atlantic commercial vermilion fishermen and Atlantic recreational king mackerel fishermen.

This temporary rule is issued without the opportunity for prior notice and public comment. The Magnuson-Stevens Act authorizes emergency action to be implemented for an initial period of 180 days and then subsequently extended for up to another 186 days under certain conditions. NMFS does not expect an extension for these measures and this temporary rule does not contain the needed measures to allow for an extension of this emergency action.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA has determined that this emergency action is consistent with the Magnuson-Stevens Act, the Snapper-Grouper and CMP FMPs, and other applicable law. This action is being taken pursuant to the emergency provisions of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

The Assistant Administrator for Fisheries, NOAA finds good cause, pursuant to 5 U.S.C. 553(b)(B), to waive prior notice and the opportunity for public comment as it is impracticable and contrary to the public interest. Commercial and for-hire fishing businesses and recreational anglers are in immediate need of significant economic relief as a result of recent unforeseen events and circumstances. Beginning in approximately March 2020, South Atlantic stakeholders have experienced closures of harbors and boat ramps and other disruptions to, and declines in, market demand for seafood and for-hire trips. Providing prior notice and opportunity for public comment would preclude implementing the measures contained in this temporary rule in time to be of benefit as soon as possible in 2020. Notice-and-comment rulemaking is contrary to the public interest under these circumstances as these entities have already been experiencing negative impacts for the majority of 2020 and delays in implementation would only add to the adverse impacts if not implemented as soon as possible. This temporary rule increases the commercial trip limit for vermilion snapper from 1,000 lb (454 kg) to 1,500 lb (680 kg) in the South Atlantic. This temporary rule also increases the Atlantic king mackerel recreational bag limit from 3-fish per person to 4-fish per person from the Connecticut/Rhode Island/New York boundary to the Georgia/Florida boundary, and from 2-fish per person to 4-fish per person from the Georgia/Florida boundary to the Miami-Dade/Monroe County, Florida, boundary. These changes are expected to provide some immediate and significant economic relief, as well as increased harvest opportunities for the South Atlantic vermilion snapper commercial sector and the Atlantic king mackerel recreational sector without increasing the risk of overfishing to either stock. NMFS estimates that the increased commercial trip limit for vermilion snapper would result in an aggregate annual increase in ex-vessel revenue of approximately $120,000 (2019 dollars) in 2020. NMFS also estimates that the increase in the Atlantic king mackerel bag limit would result in a total increase in consumer surplus to recreational anglers of approximately $3.7 million to $5 million (2019 dollars). The bag limit increase could make trips more desirable to anglers as well, leading to an increase in demand for for-hire trips, and in turn, an increase in net operating revenue for charter vessel and headboat businesses that have undergone recent business losses from unforeseen circumstances. Immediate implementation of this action also provides a greater opportunity to achieve optimum yield for each stock.

For the same reasons stated above, the Assistant Administrator for Fisheries, NOAA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness of the action. In addition, because this rule relieves a restriction by increasing the current South Atlantic vermilion snapper commercial trip limit and Atlantic king mackerel recreational bag limit, it is also appropriate to waive the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1).

List of Subjects in 50 CFR Part 622

Atlantic, Bag limits, Commercial, Fisheries, Fishing, King mackerel, Recreational, Trip limits, Vermilion snapper.

Dated: September 11, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.191, suspend paragraph (a)(6) and add paragraph (a)(16) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(16) *Vermilion snapper.* Until the applicable commercial quota specified in § 622.190(a)(4) is reached—1,500 lb (680 kg), gutted weight. See § 622.190(c)(1) for the limitations regarding vermilion snapper after the applicable commercial quota is reached.

* * * * *

■ 3. In § 622.382, suspend paragraphs (a)(1)(i)(A) and (B) and add paragraph (a)(1)(i)(C) to read as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(C) Mid-Atlantic, South Atlantic, and off Florida—4.

* * * * *

[FR Doc. 2020–20499 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200910–0238]

RIN 0648–BJ79

Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 12

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

ACTION: Final rule.

SUMMARY: We are implementing specifications submitted by the New England and Mid-Atlantic Fishery Management Councils in Framework Adjustment 12 to the Monkfish Fishery Management Plan. This action sets monkfish specifications for fishing year 2020 and projects specifications for the 2021 and 2022 fishing years. This action is needed to establish allowable monkfish harvest levels that will prevent overfishing.

DATES: These final specifications for the 2020 monkfish fishery are effective October 19, 2020.

ADDRESSES: Copies of the Framework 12 document, including the Regulatory Flexibility Act Analysis and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The specifications document is also accessible via the internet at: *https://www.nefmc.org/management-plans/monkfish.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

The New England and the Mid-Atlantic Fishery Management Councils jointly manage the monkfish fishery under the Monkfish Fishery Management Plan (FMP). The New England Council has the administrative lead for the FMP. The fishery extends from Maine to North Carolina from the coast out to the end of the continental shelf. The Councils manage the fishery as two management units, with the Northern Fishery Management Area (NFMA) covering the Gulf of Maine and northern part of Georges Bank, and the Southern Fishery Management Area (SFMA) extending from the southern flank of Georges Bank through Southern New England and into the Mid-Atlantic Bight to North Carolina.

The monkfish fishery is primarily managed by landing limits and a yearly allocation of monkfish days-at-sea calculated to enable vessels participating in the fishery to catch, but not exceed, the target total allowable landings (TAL) and the annual catch target (ACT). The ACT is the TAL plus an estimate of expected discards, for each management area. Both the ACT and the TAL are calculated to maximize yield in the fishery over the long term.

Approved Measures

1. Specifications

We are approving adjustments to the NFMA and SFMA quotas for fishing year 2020 (Table 1), based on the Councils' recommendations. We are also projecting these quotas for fishing years 2021 and 2022. In August 2019, the New England Council's Scientific and Statistical Committee (SSC) recommended acceptable biological catch levels in the NFMA and SFMA for fishing years 2020–2022. The Councils approved the specifications during their fall 2019 meetings. Both Councils' recommendations for the 2020–2022 monkfish specifications are based on the results of the 2019 assessment update and the recommendations of the SSC.

The Councils recommended a 10-percent increase in the acceptable biological catch and annual catch limit in the NFMA and status quo acceptable biological catch and annual catch limit in the SFMA, when compared to the 2017–2019 specifications. Discards, calculated using a moving average of the most recent three years of data, increased in both areas, but more significantly in the SFMA. Data indicate that this substantial increase is due to the large 2015 monkfish year class being discarded by scallop dredge gear. After accounting for discards, the Councils recommend a 5-percent increase in the TAL for the NFMA and a 35-percent decrease in the TAL for the SFMA. Despite these changes, both Councils recommend no adjustments to day-at-sea allocations or landing limits. The small increase in the NFMA is expected to convert fish that were discarded in previous fishing years into landings. The Councils do not expect the lower SFMA TAL to be constraining because SFMA landings have been lower than the 2020 TAL since 2008.

TABLE 1—APPROVED FRAMEWORK 12 SPECIFICATIONS

Catch limits	NFMA		SFMA	
	2020–2022 specs (mt)	Percent change from 2019	2020–2022 specs (mt)	Percent change from 2019
Acceptable Biological Catch	8,351	10	12,316	0
Annual Catch Limit	8,351	10	12,316	0
Management Uncertainty	3 percent	.....	3 percent	.....
Annual Catch Target (Total Allowable Landings + discards)	8,101	10	11,947	0
Discards	1,477	.....	6,065	107
Total Allowable Landings	6,624	5	5,882	−35

At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.96(d) require the Councils to revise the monkfish ACT if it is determined that the annual catch limit was exceeded in any given year, or for NMFS to revise the monkfish ACT if the Councils fail to take action. We would publish a notice in the **Federal Register** of any revisions to these proposed specifications if an overage occurs. We expect, based on preliminary 2019 year end accounting, that no adjustment is necessary. We will provide notice of the 2021 and 2022 quotas prior to the start of each respective fishing year.

2. Regulatory Corrections

Using our authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, we are clarifying trip declaration requirements at 50 CFR 648.10 for vessels making trip declarations through the interactive voice response system. Regulations require vessels using a vessel monitoring system to submit a trip declaration less than 1 hour prior to leaving port. No timeframe is specified in the regulations for vessels using the interactive voice response system. This rule clarifies that declarations using either system must be made less than 1 hour prior to leaving port. This requirement is intended to make the declaration requirements consistent for all monkfish fishery participants.

Additionally, we are using the same authority to correct the monkfish incidental catch limits in four Northeast multispecies exempted fisheries specified in § 648.80. In the final rule implementing Amendment 5 to the Monkfish FMP (76 FR 30265; May 25, 2011), we updated the tail-to-whole-weight (landed) conversion factor from 3.32 to 2.91, and applied this updated conversion to the monkfish possession limits in § 648.94. However, we inadvertently failed to update the incidental monkfish possession limits for the Northeast multispecies exempted fisheries at §§ 648.80(a)(6)(1)(B), (a)(10)(i)(D), (b)(3)(ii), and (h)(3)(iii)(A). Through this final rule, we are correcting the incidental monkfish whole weight possession limits using the 2011 conversion factor.

Comments and Responses

The public comment period for the proposed rule (85 FR 39157; June 30, 2020) ended on July 30, 2020. No comments were received on the proposed rule.

Changes From the Proposed Rule

There are no changes from the proposed rule.

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 Monkfish FMP, Framework 12, provisions of the Magnuson-Stevens Act, and other applicable law.

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: September 11, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.10, revise paragraph (h)(1) introductory text to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(h) * * *

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, less than 1 hr prior to leaving port, for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

* * * * *

■ 3. In § 648.80, revise paragraphs (a)(6)(i)(B), (a)(10)(i)(D), (b)(3)(ii), and (h)(3)(iii)(A) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(6) * * *

(i) * * *

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Atlantic herring, up to the amount specified in § 648.204; longhorn sculpin; squid, butterfish, and Atlantic mackerel, up to the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; red hake, up to the amount specified in § 648.86(d), monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(10) * * *

(i) * * *

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

* * * * *

(b) * * *

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size

smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

* * * * *

(h) * * *

(3) * * *

(iii) * * *

(A) A vessel fishing in the Scallop Dredge Fishery Exemption Areas specified in paragraphs (h)(3)(i) and (ii) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per trip.

* * * * *

[FR Doc. 2020–20415 Filed 9–16–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200908–0235]

RIN 0648–BJ27

Pacific Island Fisheries; Sea Turtle Limits in the Hawaii Shallow-Set Longline Fishery

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

ACTION: Final rule.

SUMMARY: This final rule revises measures that govern interactions between the Hawaii shallow-set pelagic longline fishery and sea turtles. This rule lowers the annual fleet interaction limit (''hard cap'') for leatherback sea turtles from 26 to 16, and removes the annual fleet hard cap for North Pacific loggerhead turtles. This rule also creates individual trip interaction limits of two leatherback and five North Pacific loggerhead turtle interactions, with accountability measures for reaching a limit. This rule provides managers and fishermen with the necessary tools to respond to and mitigate changes in North Pacific loggerhead and leatherback turtle interactions to ensure a continued supply of fresh domestic swordfish to U.S. markets, consistent with the conservation needs of these sea turtles. This action also ensures that the Hawaii shallow-set longline fishery operates in compliance with the conditions of a recent biological opinion (BiOp).

DATES: This rule is effective September 17, 2020.

ADDRESSES: Copies of Amendment 10 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) and supporting documents are available at *www.regulations.gov,* or from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Joshua Lee, NMFS PIR Sustainable Fisheries, 808–725–5177.

SUPPLEMENTARY INFORMATION: The Hawaii shallow-set pelagic longline fishery primarily targets swordfish (*Xiphias gladius*) on the high seas in the North Pacific Ocean. The Council and NMFS manage the fishery under the FEP and implementing regulations, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act. The fishery occasionally hooks or entangles protected species, including sea turtles. To address these interactions, NMFS has implemented conservation and management measures, including limits on the number of interactions allowed between the fishery and leatherback and North Pacific loggerhead sea turtles.

On June 26, 2019, NMFS issued a BiOp on the effects of the shallow-set fishery on marine species listed under the Endangered Species Act (ESA). The BiOp includes measures required to minimize the effects of incidental take. This rule implements some of those measures. This rule revises the annual fleet hard cap for leatherback sea turtles from 26 to 16. If the fleet reaches this limit, NMFS would close the fishery for the remainder of the calendar year. This rule also removes the annual fleet hard cap on North Pacific loggerhead turtle interactions because it is not necessary at this time for the conservation of this species. If the fishery exceeds the Incidental Take Statement (ITS) for any species in the current valid BiOp, NMFS would reinitiate ESA Section 7 consultation for that species. Finally, this rule establishes limits of two leatherback and five loggerhead turtles per vessel per individual fishing trip. If a vessel reaches either sea turtle limit during a fishing trip, it must immediately stop fishing and return to port, and may not resume shallow-setting until it meets certain requirements. Additional restrictions apply to vessels that might reach a trip limit twice in a calendar year.

All other requirements in this fishery continue, and NMFS will continue to monitor the Hawaii shallow-set longline fishery. You may find additional background information on this action in the preamble to the proposed rule (85 FR 6131, February 4, 2020), and it is not repeated here.

Comments and Responses

On January 23, 2020, NMFS published a notice of availability (NOA) for Amendment 10, including an environmental assessment (EA), and request for public comments (85 FR 3889); the comment period ended March 23, 2020. On February 4, 2020, NMFS published a proposed rule that would implement the management measures described in Amendment 10 (85 FR 6131). That comment period ended on March 20, 2020. NMFS received comments from individuals, the fishing industry and non-governmental organizations, and a petition with signatures, and responds below. Additionally, NMFS received and considered all comments requesting additional minor corrections and clarifications when finalizing Amendment 10 and the EA associated with this final action.

Comment 1: NMFS unlawfully failed to apply the best scientific information available when it ''failed'' to consider a population viability analysis (PVA) model of leatherback and loggerhead trends with and without fishery mortalities. NMFS ''refused'' to model sea turtle trends with mortalities because it could not explain why the fisheries' impacts would not accelerate the species' decline. As a result, the biological opinion merely describes the proportion of the adult population and total population that the fishery is expected to kill at benchmark intervals, which is the approach invalidated in *TIRN* v. *NMFS, 878 F3d 725 (9th Cir. 2017*). Moreover, the Ninth Circuit has

held that where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm. *NWF* v. *NMFS, 524 F3d 918 (9th Cir. 2008).* Without any valid scientific analysis, there is no basis for NMFS to conclude that fishery mortalities would not jeopardize loggerhead or leatherback sea turtles. The PVA take model finalized after the biological opinion was completed confirms that the action accelerates species decline and is therefore jeopardizing.

Response: In conducting the consultation required by Section 7 of the ESA, NMFS is required to use the best scientific and commercial data available. NMFS met this mandate. As described in more detail below, the type of analysis envisioned by the requester is neither a singular nor a simple analysis. Rather, it involves the creation of three separate models. By the time the biological opinion was issued in June of 2019, NMFS had two of the three models (including a PVA model) and took them into account in the development of the biological opinion. The final model was not available until March 2020, several months after the biological opinion was issued.

Importantly, the model the commenter alludes to is actually composed of three separate modeling elements, which must occur sequentially and cannot be performed simultaneously. First, a Bayesian model or prediction of the number of future interactions that each species would be likely to have with shallow-set vessels must be developed; then, a PVA must be developed for the entire population; step three is the development of the final model, the so-called ''take model.'' This is a mortality model that requires backing out information on the fishery that is already incorporated into the PVA, to avoid the ''double-counting'' of the fishery impact, and recomputing the trend, with and without the fishery. This take model was not available until March 2020.

While the first two elements of this overall modeling were available and considered as part of the biological opinion, NMFS recognized that there were important limitations to the modeling that needed to be taken into account. Initially, NMFS was concerned that drawing inferences from models developed with incomplete trend data representing less than one generation and virtually no demographic data, would give the appearance of precision when, in fact, data on loggerhead and leatherback sea turtles are insufficient to develop reliable models of the effect of ''take'' pre- and post-fishery.

This issue has long been a source of concern to the scientific community, and is discussed at length in the National Research Council 2010 publication, ''Assessment of Sea-Turtle Status and Trends: Integrating Demography and Abundance.'' More than 10 years ago, the National Academies of Sciences gathered together a team of international scientists to discuss sea turtle assessments and models, and underlying the entire review is one singular problem—that sea turtle modeling and analysis that has been done has had to ''compensate for a debilitating lack of data (NRC 2010).'' Although progress has been made, this data problem persists as there continues to be a substantial lack of demographic data available on sea turtles.

Importantly, for most sea turtle populations, there are no or very limited population-specific demographic data, such as life-stage durations or survival rates. This is true of loggerhead and leatherback sea turtles, as considered in the BiOp. Appropriate data on vital rates are critical for sea turtle population estimation, because nest count data and adult nesters represent only a very small fraction of the total population. ''These are clear reasons not to put too much confidence in the assessment of trends in nesting numbers, even if it uses the ''best available data'' in a careful and rational way'' (Crowder 2018).

Recognizing the inherent limitations in modeling with limited demographic data, and because NMFS was cautious about the falsely implied precision of converting all individual turtles that interact with the fishery to an estimated number of adult nester equivalents so as to establish a common currency by which to evaluate the effect of the fishery against the PVA, NMFS determined that the information available in June 2019 (*i.e.,* the first two models) was sufficient to conduct a jeopardy analysis without delaying the consultation further until the third model (the take model) was available. NMFS was also concerned that a third model could compound the error inherent in the PVA, discounting the importance of the injury and death of individual turtles at ages younger than adults and give the false appearance of precision around the model estimates.

Contrary to the commenter's suggestion, NMFS did not ''fail'' to develop the third model. The third model was ultimately developed and produced nine months later. It was peer reviewed and it supported the ''no jeopardy'' conclusions in the biological opinion. Further, the model was deemed the ''best available science'' by the Council's Scientific and Statistical Committee (SSC) although their role was to look at its usefulness under the Magnuson Act as opposed to the Endangered Species Act.

The PVA model in question relies solely on trends in annual nest counts from a subset of beaches considered representative for each species (leatherbacks and loggerheads). Nest counts are then converted to individual nesters and these numbers are used to predict trends in the populations. The NRC notes that methods based on reproductive value (or adult equivalents), such as used in the PVA model, are best used for relative comparisons within species to set priorities for research or conservation effort, rather than attempts at quantitative assessment of threats or setting take limits, as this could 'discount' takes of some turtles.

Development of the first two models took about nine months to complete, and consultation was initiated after the completion of the first model. Consultation timelines were running while the second (PVA) model was in development. The consultation was extended more than six months to allow completion of the second model. Based on the data and models available at the time, NMFS was able to conclude its consultation without waiting a further nine months on the third model.

The commenter's claim regarding *TIRN* v. *NMFS* is also in error. Contrary to the comment, NMFS did not merely employ the same analytical method as addressed in *TIRN* v. *NMFS.* The analytical method the commenter refers to describes the proportion of the adult population and total population that the fishery is expected to kill at benchmark intervals. Instead, when developing the BiOp on the shallow-set longline fishery, NMFS analyzed the effect of the action on several demographically important subsets of the total population: The adult population, the portion of the adult population represented by females only, the proportion of the population represented by unique life history types (summer nesters, summer nester adults and summer nester females), and the potential to disproportionately affect a subpopulation or breeding aggregation (*e.g.,* Ryuku loggerhead sea turtles).

Importantly, NMFS evaluated these effects under four scenarios: The current population size, and three different future population numbers (50, 25, and 12.5 percent of the current population size). This was done to ensure that all impacts considered in the Status of the Species, Baseline and Cumulative

Effects sections, including other federally authorized fisheries and foreign fisheries, were appropriately factored into the evaluation. In other words, consistent with the ESA implementing regulations and the approach to the assessment as described in the BiOp, NMFS examined the effect of the action on numbers (*e.g.,* total abundance, numbers of adults, numbers of females), reproduction (*e.g.,* numbers of females and reproductive adults), and distribution (*e.g.,* subpopulations and unique life histories) over a 40-year time horizon (under the assumption of continued degradation of the baseline conditions) and each of these analyses led us to conclude that the small number of animals that would be taken by the shallow-set longline fishery would not, directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of any listed species in the wild by reducing the reproduction, numbers or distribution of that species. This analysis did not discount or remove some of the animals from its assessment because they were suspected of being juveniles or sub-adults that would be unlikely to survive to reproduction (adult nester equivalents). Because there is no reliable known size threshold for an adult, and we do not know that age and stage survival rates would apply to a subset of the population that is affected by the fishery, and we do not know age and stage survival rates for loggerhead and leatherback sea turtles, the BiOp assumed that each individual turtle that the fishery interacts with has the same chance of reaching its full reproductive potential as the next. In other words, juvenile sea turtles were not considered less important than an adult and the interaction with animals suspected of being in the juvenile age-class were not discounted in the BiOp.

The commenter also points to the Ninth Circuit's dicta regarding ''baseline jeopardy.'' NMFS believes that the Court's use of this term misconstrues the analytical standard that must be applied for a valid Section 7 analysis. To determine whether an action will jeopardize the continued existence of a species, NMFS must assess the effects of a Federal agency action by adding those effects to the environmental baseline. Jeopardy occurs when the effects of the action together with the environmental baseline show that the action appreciably reduces the species' likelihood of survival or recovery. The ESA does not recognize a species' status as being in a pre-determined condition of jeopardy. As NMFS explained in the proposed (83 FR 35178, July 25, 2018) and final (84 FR 44976, August 27, 2019) Section 7 rules, the ESA does not recognize a baseline state of jeopardy. Rather, the ESA is concerned with the action's effects, and whether those effects appreciably reduce the likelihood of the species' survival or recovery in the wild.

While our PVA illustrates that long-term persistence of the leatherback sea turtle is precarious, the proper inquiry is whether the action causes new harm that is consequential to the species' viability. Minor impacts to the species' pre-action condition are not jeopardizing if they do not result in consequential reductions in numbers, reproduction, or distribution at the species level. NMFS too is concerned with the long-term status of the leatherback sea turtle. However, to complete its evaluation of the action under ESA Section 7, NMFS appropriately relied upon its understanding of ecological theory and experience with population growth or decline, which is captured by the fundamental equation: $N_t = N_0$ + (Births + Immigration) − (Deaths + Emigration).

Every population model derives from this equation (the ''BIDE'' equation). The BIDE equation reveals the error in asserting that the added loss of a few individuals from a population that exhibits a declining trend necessarily ''jeopardizes'' the continued existence of a population or species. A declining trend means that the ratio between N_t and N_0 is less than 1.0 (or substantially less than 1.0, if we consider year-to-year variation). However, a population experiencing such a decline still has births and, in some cases, immigration. To illustrate, a small number of deaths would not alter the trajectory of even a declining population if the number of births exceeds the number of deaths in the same time interval (or if recruitment into a life history stage exceeds the number of deaths in that stage). The implication of the BIDE equation is that even if ''tipping points'' are nominally identified and quasi-extinction thresholds (QETs) estimated, factors that influence productivity outside of our knowledge and control can shift abundance upward, making both constructs invalid.

NMFS analyses were complete given the available data, and NMFS correctly analyzed the effects of the action on the species' viability. Because of its concerns about the paucity of data, NMFS examined several reasonable step-down scenarios relative to the numbers, distribution, and reproduction of the species. NMFS remains confident in its conclusion that the small number of mortalities, even for the leatherback sea turtle and even though there is a measurable reduction in numbers associated with the proposed action, would not appreciably reduce the species' likelihood of survival or recovery.

This conclusion is borne out in the third model (the take portion of the PVA model), which the commenter references. Although the take model was not available when the BiOp issued, subsequent analysis using the model confirms the BiOp's conclusions that the action is not expected to directly or indirectly reduce appreciably the likelihood of either the survival or recovery of leatherback or loggerhead sea turtles in the wild. In other words, the likelihood of survival and recovery remains relatively constant with or without the action.

Although the take model suggests that there is a difference between the ''no take (PVA)'' model and the ''take'' model for leatherbacks, the modeled differences are not detectable for roughly 40 years (to 2060). The difference predicted by the third model is not discernable at the point when the leatherback population reaches half its current abundance, though there is a minor observed difference as the population gets smaller (0.01 percent difference when the leatherback sea turtles population reaches 25 percent or 12.5 percent of its current size) and time considered is lengthened. We stress the point that the farther out the projection, the more uncertainty we have around the estimates, and that this model and the analysis in our BiOp applies as a protective assumption, a consistent annual amount of take even though, as the population declines over time, the likelihood of take of individuals also declines. In other words, limitations in our predictive capabilities and changes in future management regimes would render predictions over a longer period increasingly speculative. This is true not only for the PVA with take and without take, but is also true of the analysis we did for the BiOp. Shorter term estimates (*e.g.,* 10 years) are expected to provide more accurate predictions of the effect of the action, but estimates at a longer time interval are more uncertain. In addition, an underlying caveat or assumption of the model and the analysis in the BiOp is that as the population continues to decline (50 percent, 25 percent, and 12.5 percent of current size) the actual number of animals taken in the fishery would not change. This assumption is considered protective of the species, but highly unlikely to be true over an extended time. For example, at the prediction point approximately 40 years in the

future (2060), when the potential impacts of the shallow-set longline fishery appear to be detected for leatherbacks, the mean number of nesting females in the absence of the shallow-set longline fishery is predicted to be 24, and the continued fishery take of up to two adult female per year therefore becomes detectable. However, as the population declines and a species becomes rarer, we would generally expect that the rate of interaction (take) would also tend to decline. Since we do not know how ''rareness'' would affect future interaction rates, we opted to assume that interactions would remain constant over time for the purposes of our jeopardy analysis. This assumption alone would tend to cause longer term evaluations to be less reliable, and would warrant careful consideration of perceived mathematical differences in predicted impacts resulting from the action. To highlight this point, the ''take'' PVA model predicts that the leatherback population will become extinct 5 years earlier than the ''non-take'' model. However, in the year when the mean ''take'' model predicts extinction, the number of nesting females remaining in the ''no-take'' model is one nesting female. Logically, maintaining the unrealistic same level of take at this point makes the population appear to reach extinction levels 5 years sooner under the ''take'' model, when this is really just a result of our assumption of constant fishery interaction numbers. There was no discernible difference at all for loggerheads between the ''no take (PVA)'' model and the ''take'' model.

Both approaches, the analytical approach taken in the BiOp, and the take/no take model completed nine months after the BiOp have the same basic structural limitations. The primary limitation stems from the ability to reliably predict population growth (or decline) and changes in demographics, which are critical to understand species' extinction risk. Both assessment methods are reliant upon female nester abundance predictions from nest counts. Because these data represent a very small fraction of the total population, and little is known about males, juveniles, or population specific demographics, conclusions drawn about the species from these data are likely to be inaccurate. Thus, NMFS took steps in the consultation and the BiOp to develop a thoughtful and appropriately precautionary analytical approach that would not disadvantage the species. NMFS considers the approach in the BiOp to have certain advantages as an assessment tool because it recognized the importance of unique life histories and the role of small subpopulations (independent demographic units). Nevertheless, both the third NMFS model (take model) and the analysis contained in the BiOp support the same conclusion that the proposed action would not directly or indirectly reduce appreciably the likelihood of both the survival and recovery of any listed species in the wild by reducing the reproduction, numbers or distribution of that species.

Comment 2: The de-lifing approach was improperly applied prospectively across multiple generations, and erroneously assumed a 6 percent generational decline for leatherbacks rather than a 6 percent annual decline.

Response: As defined by Coulson et al. (2006), de-lifing is a retrospective analysis that address questions in evolutionary ecology by identifying an individual's observed contributions to the mean fitness of a population in a given year (as opposed to an entire generation). Upon careful reconsideration, we agree that we erred in our application of the de-lifing approach, and therefore cannot rely upon this analytical method as described in the BiOp. Specifically, the approach was improperly applied prospectively across multiple generations, and contained a mathematical error. However, the de-lifing analysis was not an essential component in reaching the no-jeopardy conclusion for leatherbacks. Our BiOp examined the effect of the action on several reasonable and demographically important units, as described above, including females, summer nesters, small subpopulations, and at reduced population sizes. Based on the multiple analytical evaluations, and the recently published model, the action did not materially change the species' pre-action condition—not its reproduction, numbers, or distribution—and did not hasten the species' decline.

Comment 3: By failing to calculate the species' tipping point or QET, the agency failed to adequately examine the action's impacts on recovery.

Response: The commenter asserts that the failure to calculate a tipping point is relevant to the action's impact on recovery. First, a tipping point is not a scientific construct; it is a term that embodies a general concept that beyond a certain threshold, large uncontrolled shifts in ecology will occur. Second, the tipping point concept does not have bona fide relevance to conservation or recovery within the ESA, as is specifically noted in the recent regulations for Interagency Cooperation under the ESA (84 FR 44976, August 27, 2019). As explained in the BiOp, tipping points (and QETs) are theoretical constructs that the commenter suggests serve to identify a defined level beyond which imperiled populations cannot be expected to recover. It is technically impossible to know, in advance, where the ''tipping point'' that forecloses recovery might lie for free-ranging plants and animals (and even animals in captivity). Similarly, QETs are arbitrary thresholds used in population ecology to identify some non-zero point below which population abundance might fall, and the probability of falling below that non-zero threshold. Importantly, QETs, like tipping points, are only theoretical methods to evaluate extinction, they are not determinative, and while potentially helpful in assessing jeopardy risk relative to survival under the ESA, they are not relevant to the separate assessment of recovery. In a logical analysis, the effect of a proposed action on the potential for recovery is appropriate when the first analysis for jeopardy concludes with ''does not reduce the likelihood of survival;'' As the recovery standard is a level of abundance and reproduction that allows a species to be self-sustaining in the wild without the protections of the ESA, QETs and tipping points are not pertinent to that portion of the analysis.

In the BiOp, we estimated the probability that that species would become extinct over time, but we do not have predefined thresholds or decision rules as to what point within that probability a ''jeopardy threshold'' is reached for each species. NMFS has explored the use of quantitative thresholds in listing, in particular, and several such extinction thresholds have been suggested for more than 20 years. The same premise could apply to ''jeopardy'' evaluations relative to ''survival'' and ''recovery,'' yet the agency has declined to predefine policy thresholds for its ESA decisions because such predefined decision rules in data deficient situations would have to be established as general guidelines or rules, and would be arbitrary for most species. No set of decision rules can compensate for information gaps, particularly when trends are poorly known and demographic data are absent. Moreover, in many cases establishing population level thresholds would overshadow understanding and evaluating the threats on the underlying independent demographic units that comprise the listed species.

Our assessment approach in the BiOp recognizes that a species' risk of extinction is affected by the strength or weakness of the populations or independent demographic units that

comprise that species. Producing an assessment approach that relies solely on quantifiable metrics at the species level would fail to account for the important role that the underlying independent demographic units play in the species' risk of extinction, particularly where there is insufficient information to adequately develop a credible quantifiable metric.

Early work on PVA and population ecology did include efforts to define minimum viable populations, defined as the smallest number of individuals required for a population to persist at some predefined probability of time. This led to the development of the 50/500 rule in conservation management, which simply states to avoid inbreeding depression (loss of fitness due to genetic problems), an effective population size of at least 50 individuals is necessary. To ensure that the population can maintain its evolutionary potential to cope with environmental change at least 500 individuals are necessary. Following this line of thinking, 50 individuals might be a survival threshold and 500 individuals might be best considered the minimum number necessary to ensure recovery. However, almost 40 years have passed since these concepts were introduced into the field of conservation biology. We now know that these arbitrary thresholds are not broadly useful, because species differ in their needs, reproductive strategies, age at fecundity, et cetera. As discussed at length in the BiOp, some species can dip well below 500 and be recoverable, and many survive after dropping to numbers below 50.

Common tipping point metrics, or QETs, that are often used in PVAs and many scientific analyses include several of the same metrics we used in the development of our PVA for loggerhead and leatherback turtles, and in our ''jeopardy'' evaluation (*e.g.,* mean and median times until each species declines to 50 percent, 25 percent, and 12.5 percent of current abundance estimates, probability of each species reaching those thresholds in 5, 10, 25, 50, and 100-year time intervals with associated 95 percent confidence intervals). We used these metrics to characterize the current viability of loggerhead and leatherback sea turtles but these predictions, at the species level, did not help characterize the status of the independent demographic units that comprise each species over time. Demographically-independent units (populations, subpopulations, demes, etc.) that comprise each listed species are important to understanding the species' chances for both survival and recovery. The structure and performance of the two species as they have been listed, the sub-populations that comprise these species, the populations that comprise the various sub-populations, and the demes that comprise those sub-populations are addressed in our consultation using both quantitative and qualitative means, and it is in this combined approach we evaluated the impact of the action on the species' chance of both survival and recovery.

As noted in the NRC 2010 report, reference points are used in fisheries management to demark levels of overfishing and the level of stock abundance that results in sustainable populations, however, such analyses require long time series of data and detailed information on a population's demographic rates. Without such demography there is no way to predict the effects of fishery bycatch, especially for animals as long-lived as sea turtles. The NRC also notes that methods based on reproductive value (or adult equivalents), such as used in the PVA ''take'' model, are best used only for relative comparisons within species to set priorities for research or conservation effort, rather than attempts at quantitative assessment of threats or setting take limits.

While research has been done on identifying ''tipping points'' in species abundance trends, these have primarily been either theoretical in nature, using laboratory studies of fruit flies in which 20 or more generations of data are available for analysis, or are retroactive studies in which patterns are only realized after they have happened. The generation time for leatherback sea turtles is approximately 22 years assuming age at maturity is 16 years and annual adult survival rate is 0.89. The longest time series available for the PVA was 17 years; hence, identifying tipping points from a time series of abundance of less than one generation is not feasible, would not be a reliable metric, and would not be a relevant metric for the recovery component of the jeopardy analysis.

Comment 4: The proposed individual vessel limits are too high to effectively reduce endangered sea turtle interactions and mortalities as required by Reasonable and Prudent Measure 1 of the ITS in the BiOp. Further, this measure undermines the entire regulatory scheme by allowing a few bad actors to single-handedly exacerbate the likelihood of sea turtle extinction.

Response: This final rule establishes individual trip limits of five loggerhead and two leatherback turtles, as required by terms and conditions of the BiOp, which apply to every vessel in the shallow-set longline fishery. If a vessel reaches either limit, NMFS will require that vessel stop fishing and return to port, and that vessel will be prohibited from shallow-set fishing for 5 days. This provides a 7–10 day cooling-off period given the distance between fishing grounds and ports in Hawaii and California. The cooling-off period may allow the environmental conditions contributing to the high interactions to dissipate and reduce the likelihood of additional interactions in that area in subsequent trips. If a vessel reaches a trip limit twice in a calendar year, NMFS will prohibit that vessel from shallow-set fishing for the remainder of the calendar year. In the following calendar year, that vessel will have a vessel limit of five loggerhead or two leatherback turtles).

The Council's recommendation to specify a loggerhead trip limit of five was based on the finding that it would provide the most meaningful reduction in interactions in years with high interaction rates, such as those observed in 2017–2018. Observed sea turtle interaction data since 2004 indicate that most shallow-set longline trips with loggerhead turtle interactions have one-two interactions per trip, with a small proportion of trips having four or more interactions coinciding with years with the highest total fleet-wide interactions. The NMFS Pacific Islands Fisheries Science Center (PIFSC) simulated different levels of trip limits, ranging from two-five, to past observed interactions. Based on these simulations, a limit of five loggerhead turtles per trip would have reduced loggerhead turtle interactions in 2018 by 30 percent, even without accounting for avoidance behavior by the vessels. The Council, therefore, determined that the loggerhead trip limit of five would provide a mechanism for response to higher interaction rates, and minimize further interactions when such higher interaction rates are detected while helping to ensure year-round supply of swordfish to meet domestic demand. Note the leatherback trip limit is a complement to, and not a replacement of the fishery's hard cap of 16 leatherback turtles, and also serves as preventative measure if higher interaction rates are observed in the future, and may reduce the likelihood of reaching the hard cap if vessels are able to avoid a second interaction after encountering the first leatherback on a given trip.

Individual trip limits are expected to provide early detection to higher interaction rates that may indicate a potential for higher impacts to sea turtle populations in a given year, and are

expected to reduce loggerhead and leatherback turtle interactions in such years. Individual trip limits are intended to mitigate a large proportion of loggerhead and leatherback turtle interactions from occurring in a single trip. Observed sea turtle interaction data since 2004 indicate that trips with loggerhead turtle interactions typically have one-two interactions per trip in years with low fleet-wide loggerhead turtle interactions. Conversely, trips with three or more loggerhead turtle interactions have been observed in years with high fleet-wide interactions. In 2018, when the highest number of loggerhead turtle interactions was observed, 16 percent of the trips contributed to 58 percent of the total fleet-wide interactions. Monitoring the number of loggerhead turtle interactions per trip would provide an early detection mechanism for higher fleet-wide interactions, and the individual trip limit is expected to provide a ''dampening'' response by minimizing further interactions on those trips.

Individual trip limits also provide an individual vessel incentive to avoid sea turtle interactions because shallow-set vessels may fish 500–1,000 nm from port and require considerable up-front costs for each trip, and thus a shortened trip duration may result in net loss for that trip. Given the economic disincentive of reaching the trip limit, vessel operators are more likely to employ additional avoidance strategies if they encounter multiple interactions in a trip, such as moving away from the area and avoiding areas with higher potential for interactions using information from the NMFS TurtleWatch program. If a vessel reaches a trip limit once, that vessel is more likely to avoid fishing in the same area as the previous trip and employ additional avoidance strategies to prevent further economic loss. Thus, conservation benefits are expected even before the individual trip limit is triggered. Because reaching a trip limit twice in a calendar year would result in that vessel being prohibited from fishing for the remainder of the year, there is a direct disincentive to continue fishing practices that might result in additional interactions.

Additionally, the return to port requirement serves as an additional deterrent to reaching a vessel limit due to the distance between fishing grounds and ports in Honolulu and California where shallow-set vessels land their catch. The travel distance from port to the areas where the shallow-set vessels typically operate is at least 2–3 days and may take as long as 5–6 days one-way. If a vessel reaches a trip limit, the travel time back to port, time in port, and travel time to return to fishing grounds would result in a minimum of 7–10 day days of no fishing. This time lag between the last set on the trip in which a vessel reaches a trip limit and the first set on the subsequent trip also provides a cooling-off period that allows for the conditions contributing to the high interactions to dissipate and reduces the likelihood of additional interactions in that area in subsequent trips. The trip limit also places the accountability of interactions on individual vessels and ensures that the consequence burden remains with the vessel that reaches the individual trip limit.

The Council considered the individual vessel limit, as a standalone measure, to be punitive by discouraging participation in the fishery, and thus inconsistent with the purpose and need of the action to help ensure year-round fishing operations and a continued supply of fresh swordfish to U.S. markets.

Comment 5: One hundred percent observer coverage is necessary to enforce interaction limits.

Response: NMFS currently places at-sea observers on 100 percent of shallow-set longline trips, and this action does not change this. Current NMFS observer data-collection protocols instruct observers to report sea turtle interactions using a satellite phone after each observation, which are used to monitor interaction limits. However, NMFS routinely uses statistical modeling as a proven and reliable method for estimating observer coverage necessary to meet management and monitoring objectives, including coverage to monitor for protected species interactions. NMFS will also continue to explore other tools, such as electronic monitoring, to meet monitoring program objectives.

Comment 6: Continued operation of the Hawaii-based shallow-set longline fishery will adversely affect leatherbacks by jeopardizing the species in violation of the ESA and, therefore, NMFS does not have a valid basis to issue a finding of no significant impact, and an environmental impact statement must be prepared to evaluate the significant effects of the fishery on protected species.

Response: NMFS finds that the continued operation of the shallow-set fishery will not adversely affect the leatherback turtle by causing jeopardy to the species, and NMFS is not in violation of the ESA. Under the ESA, NMFS may authorize the fishery to interact with protected species that would otherwise be prohibited, if conducted pursuant to a lawful activity, and if conducted in accordance with the terms and conditions of a no-jeopardy BiOp and ITS. The BiOp concluded the continued operation of the shallow-set fishery is not likely to jeopardize the continued existence of the leatherback turtle, and analyzed up to 21 interactions (3 mortalities) annually when making this determination. Reasonable and Prudent Measure 1 Term and Condition 1a further limits the fishery to 16 interactions annually which represents an approximate 25 percent reduction in the number of turtles from the predicted interaction numbers in this BiOp. If the fishery reaches this limit, the terms and conditions require that NMFS shall close the fishery for the remainder of the calendar year. The hard cap limit, trip limits, and additional accountability measures specified in this rule are consistent with the Reasonable and Prudent Measures and Terms and Conditions contained in the BiOp.

As described in the response to Comment 1, our analysis is further supported by the PIFSC PVA take model to assess the population level impacts of post-interaction mortality of loggerhead and leatherback turtle interactions in the shallow-set fishery (Martin et al. 2020). The model builds upon the PVA considered in the BiOp. Data for the North Pacific loggerhead came from three index beaches in Yakushima, Japan (Inakahama, Maehama, Yotsusehama), which represents 52 percent of the overall population; and data for the western Pacific leatherback population came from two index beaches in Indonesia (Jamursa, Medi, and Wermon), which represent approximately 75 percent of the overall population. These nest counts represent the best scientific and commercial data available for these species. Furthermore, the model is considered to be conservative because the full anticipated take is only applied to the index beaches (approximately 52 percent of the North Pacific loggerhead population and 75 percent of the Western Pacific leatherback population).

For each species, the modeling framework shows the probability of the population being above or below abundance thresholds (50 percent, 25 percent, 12.5 percent of current annual nesters) within a 100-year simulation time frame, and the number of years (mean, median, and 95 percent credible interval) to reach each threshold for both ''take'' and ''no take'' scenarios (*i.e.,* the population trends with and without the take associated with the fishery). The take level evaluated in the model was derived from predictions generated by PIFSC using a Bayesian

inferential approach (McCracken 2018) and analyzed in the BiOp. Results for both species suggest that the fishery's anticipated take to be negligible on the long-term population trends, with no discernable changes to the probabilities of the populations falling below abundance thresholds between the ''no take'' and ''take'' scenarios for the future (Martin et al. 2020). For the leatherback turtle, the difference in the population trend only becomes apparent after the year 2060 and suggests the population would go extinct roughly 5 years sooner than in the ''no take'' scenario (around Year 2110 vs. 2115). However, this 5-year difference is inconsequential, and the actual population difference of the 5 year divergence represents less than one adult nester. Importantly, the difference seen between the ''no take'' and ''take'' scenarios in the 100-year projection is not seen in the 10-year projection (see Martin et al. (2020) Figs. 22 and 23).

As described in the EA and Martin et al. (2020), projections out to 10 years into the future are more relevant biologically for management purposes than to 100 years given the estimated uncertainty in the population parameters. Specifically, the effects of the environmental or anthropogenic drivers on the population would be lagged; therefore, we think the first 10 years is largely based on the previously observed trend but after that we do not have sufficient information to account for uncertainty of the drivers that affect the populations. Additionally, we analyzed the trend with historical impacts from the fishery removed (*i.e.,* by adding back the adult nesters to the population); however, there was no difference between the trends for the ''take'' and ''no take'' scenarios for either species for the past.

In summary, while NMFS conservatively estimates the removal of up to three leatherbacks annually by the fishery, this level of take is not expected to have any consequential impacts in terms of reductions in numbers, reproduction, or distribution at the species level. Rigorous terms and conditions that include annual hard caps for leatherbacks and individual trip limits for sea turtle species help ensure that the fishery's already minor impacts are further mitigated. Moreover, NMFS previously completed a comprehensive Environmental Impact Statement on the shallow-set longline fishery in 2008. This action modifies the prior action by implementing new terms and conditions to mitigate impacts to leatherbacks and loggerheads. Accordingly, NMFS properly concluded that an environmental impact statement was not required.

Comment 7: The draft EA is deficient because it does not examine a reasonable range of alternatives. The National Environmental Policy Act (NEPA) requires Federal agencies to ''study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. Most noticeably, none of the alternatives examined would allow a single ''maximum take'' trip per year, and another feasible but unexplored alternative is prohibiting fishing in the thermal band between 17.0 and 18.5 degrees Celsius that is preferred habitat for both loggerhead and leatherback sea turtles.

Response: NMFS and the Council complied with all procedures and requirements under NEPA when developing Amendment 10 and this final rule. As described in Section 1.1.2, section 2.1, section 2.3, and Appendix A of the EA, the Council considered a reasonable range of options for managing the loggerhead and leatherback turtle interactions in the shallow-set fishery, including single year hard caps, multi-year hard caps, and removal of hard caps altogether, individual vessel limits as a stand-alone measure, in-season measures (*e.g.,* trip limits and in-season temporary closures), spatial and temporal measures to manage interaction hotspots and non-regulatory measures (*e.g.,* improvements to fleet communication, industry-led initiatives, and furthering research to minimize trailing gear).

In developing these alternatives, the Council considered the following information: Fisheries observer data for loggerhead and leatherback sea turtle interactions since 2004, effort and economic performance trends of the fishery since 2004, population assessments for the North Pacific loggerhead and western Pacific leatherback turtle populations, the BiOp for the shallow-set fishery, the recent characteristics of loggerhead turtle interaction patterns since 2017, the effectiveness of existing mitigation measures such as circle hooks and mackerel-type bait, potential development of industry initiative for a sea turtle avoidance program, impacts of the hard cap closures on fishery performance, and the 9th Circuit Court decision and settlement agreement (*Turtle Island Restoration Network et al.* v. *NMFS; Civil No. 1:12–cv–594–SOM–RLP*).

Upon consideration of the broad range of potential management options and available information, and consistent with the action's Purpose and Need, the Council identified individual trip limits as the most practicable and appropriate measure in developing a more responsive management approach that would further minimize impacts to sea turtles while helping to ensure the year-round fishery operations and supply of fresh swordfish to meet market demands. As described in Section 2.3 of the EA, the Council rejected other measures that did not meet the purpose and need, were not practicable, were not necessary or appropriate, or lacked sufficient data to evaluate effectiveness. The measures rejected by the Council include individual vessel limits as a stand-alone measure, real-time spatial management measures, and time-area closures, which are substantially similar to the alternatives identified by the commenter.

Specifically, the Council rejected individual vessel limits as a stand-alone measure because prohibiting vessels from fishing shallow-set for the remainder of the calendar year if vessels reached the established per-vessel limit would not result in meaningful conservation gains compared to the individual trip limits, as the best available information indicate that the likelihood of vessels having multiple trips with high number of turtle interactions in a given year is very low, and individual trip limits are expected to be just as effective in responding to the rapid accumulation of sea turtle interactions as individual vessel limits. The Council also found that individual vessel limits would discourage vessels from participating in the shallow-set sector of the Hawaii longline fishery as the consequence of reaching an individual vessel limit (prohibition from fishing shallow-set gear for the remainder of the year) is expected to act as a disincentive for entering the fishery, and thus would be inconsistent with the purpose and need of the action.

The Council also explored but rejected real-time spatial management measures and time-area closures that included consideration of the TurtleWatch thermal band for loggerhead and leatherback turtles. The Council found that there are insufficient data to conclude that actions to disperse fishing effort from a particular location will positively impact sea turtle conservation. For example, the original TurtleWatch temperature band between 17.5 and 18.5 degree Celsius is intended to encompass approximately 50 percent of the loggerhead turtle interactions, indicating that avoiding effort in that band would shift effort into areas where the remaining interactions have been

historically observed. The thermal band identified by TurtleWatch also overlap with productive swordfish fishing grounds during the peak fishing season, and thus prohibiting fishing in such thermal band would likely discourage vessels from shallow-set fishing. Additionally, prohibiting fishing in a non-static thermal band that shifts daily is impractical from both a management and enforcement standpoint, and presents significant challenges in terms of providing fishermen with timely notice.

Following the issuance of the 2019 BiOp, the Council further considered modifying its recommended management action for consistency with the Reasonable and Prudent Measures therein. The alternatives analyzed in the EA represent the final range of alternatives that the Council considered at its 179th Meeting and is a reasonable range based on the purpose and need of the action, history of the development of alternatives, and the need to incorporate the Reasonable and Prudent Measures as part of the Council action.

Comment 8: The Hawaii Longline Association (HLA) supports NMFS and the Council's proposal to eliminate the existing hard cap for loggerhead sea turtles, and although HLA does not actively oppose NMFS and the Council's proposed implementation of a hard cap for leatherback sea turtles, HLA believes it to be unnecessary.

Response: Regarding the loggerhead turtle, NMFS agrees. The annual hard cap was first implemented as a measure to control sea turtle interactions on the model shallow-set longline fishery while NMFS gathered information on the effectiveness of using circle hooks and mackerel-type bait in reducing sea turtle interactions in the fishery. At the time, the best scientific information available indicated that the North Pacific loggerhead turtle population was projected to decline (NMFS 2004). The current best available scientific information indicates that the North Pacific loggerhead population is increasing at an average rate of 2.3 percent, and the total population estimated in the 2019 BiOp is approximately 340,000 turtles. We note that nothing in the ESA requires that fishery hard caps be used as a management tool, and current information strongly suggests that other mitigation measures, including individual trip limits, will be effective in reducing impacts to loggerheads, while allowing for year-round fishing opportunities.

In the absence of a hard cap for loggerhead turtles, the fishery would still be constrained by the individual trip limit of five loggerhead interactions as well as additional restrictions if the trip limit were reached twice in a calendar year. Consistent with the requirements of the ESA, NMFS would reinitiate consultation pursuant to ESA Section 7 if the ITS for loggerhead turtles is exceeded.

Unlike the loggerhead turtle, the current best scientific information available indicates that the western Pacific leatherback population is decreasing at an average rate of −6.1 percent, and the total population estimated in the BiOp is approximately 175,000 turtles. Although NMFS has determined the operation on the fishery is a not likely to jeopardize the leatherback turtle, we have nevertheless taken additional precautions to reduce the hard cap limit to 16, which represents an approximate 25 percent reduction from the ITS, to minimize the impacts, *i.e.,* amount or extent, of incidental take. Furthermore, this term and condition for Reasonable and Prudent Measure 1 set forth in the 2019 BiOp must be undertaken by NMFS for the exemption in ESA section 7(o)(2) to apply to the shallow-set longline fishery.

Comment 9: HLA supports the trip limits of five loggerhead and two leatherback interactions per trip, but objects to the proposed vessel limits that would apply in the subsequent year if a vessel reaches a trip limit twice in a calendar year.

Response: A purpose of this action is to modify sea turtle mitigation measures for effectively managing impacts to leatherback and loggerhead sea turtles from the shallow-set fishery, consistent with the requirements of the reasonable and prudent measures and terms and conditions of the 2019 BiOp. Term and condition 1b states, ''. . . NMFS shall require any vessel that reaches a trip limit for either species twice in one calendar year to have an annual vessel limit of 2 leatherbacks or 5 loggerheads for the following year.'' As described in response to Comment 6, these measures must be undertaken by NMFS for the exemption in ESA section 7(o)(2) to apply.

Comment 10: The NMFS take estimates and, therefore, its proposed mitigation measures, are based upon overly precautionary incidental take estimates.

Response: For the purpose of ensuring that our analysis is appropriately precautionary, we chose the 95 percent credible intervals when estimating the take level. The 95 percent credible interval fully represents the possible range of takes, and thereby ensures we are not underestimating potential impacts to species over the full period of the action. In terms of take, this means that there is a 95 percent probability in any given year that the true number of animals captured or killed is within the credible interval. While we agree that the fishery is unlikely to capture animals at the 95 percent credible interval year after year, the BiOp accounts for this and examines take at both the 95 percent interval and mean in its analysis.

Comment 11: The PIFSC modeling analysis and report supports and confirms the BiOp ''no-jeopardy'' conclusion and a determination that the proposed action has no significant impact on the environment.

Response: NMFS agrees the PIFSC modeling analysis and report supports and confirms the BiOp ''no-jeopardy'' conclusion and a determination that the proposed action has no significant impact on the loggerhead and leatherback sea turtles. See also Response to Comment 1.

Comment 12: Closures and reduced effort in the fishery result in increased domestic reliance on foreign supply and increased adverse impacts on sea turtles.

Response: Our environmental analysis acknowledges fishery closures often result in shallow-set vessels converting to deep-setting gear to target bigeye tuna and continue to fish under the Hawaii longline limited entry permit. Additionally, in the absence of the swordfish supply from the Hawaii shallow-set fishery, it is possible that fish vendors could increase imports of foreign-caught swordfish to fill the market gap in meeting the demand for swordfish in the U.S. (see Chan and Pan 2016; Rausser et al. 2009). NMFS analyzed whether the transferred effect should be treated as an indirect effect of the fishery in the BiOp, and concluded the evidence available does not indicate that the continued operation of the shallow-set fishery is reasonably certain to cause a change in the number of sea turtles captured and killed in foreign fisheries. As a result, we do not treat the number of sea turtles captured and killed in foreign longline fleets as an ''indirect effect'' of the proposed action. Instead, the BiOp evaluates the effects of other fisheries, including foreign fisheries, in the action area, on threatened and endangered species in the environmental baseline section of the BiOp. Specifically, foreign fisheries that occur in the action area are treated as ''other human activities in the action area'' that may affect the status of listed species in that action area. At a larger scale, the BiOp evaluated the positive and negative past, present, and future

effects of those fisheries in the status of listed resources section to the extent information was available.

Comment 13: Several commenters oppose the Council's recommendation to remove the loggerhead hard cap.

Response: The ESA does not require NMFS to establish hard caps to manage commercial fishery impacts to protected species. The hard caps were first implemented in 2004 as a measure to control sea turtle interactions on the model shallow-set longline fishery while information was being gathered on the effectiveness of using circle hooks and mackerel-type bait in the Hawaii fishery. At that time, the best available scientific information indicated that the North Pacific loggerhead turtle population was projected to decline (WPFMC 2004). The current best available scientific information indicates that the North Pacific loggerhead population is increasing at an average rate of 2.3 percent, and the total population is estimated at approximately 340,000 turtles (Martin et al. 2020).

The Council and NMFS examined the potential long term effects of removing the hard cap as detailed in the EA. In the absence of a hard cap, the shallow-set fishery is expected to have a long-term average of 15.6 loggerhead turtle interactions per year and a low probability (less than 5 percent) of exceeding the ITS of 36 interactions in any given year, based on the predicted distribution of the anticipated level of loggerhead turtle interactions in the shallow-set fishery (McCracken 2018). The probability of exceeding the ITS of 36 is based on the upper range of the predicted distribution that estimated the fishery to have equal to or less than 36 interactions in any given year at the 95th percentile value. The predictions assumed that the fishery operated throughout the year for every year included in the analysis and did not truncate the predicted takes, thus providing a reasonable prediction of future level of interactions in the absence of a hard cap limit.

Under this final rule, if the fishery exceeds the loggerhead ITS of 36 in the BiOp, NMFS would reinitiate consultation pursuant to ESA Section 7. While the ESA requires reinitiation of Section 7 consultation when an ITS is exceeded, it does not necessarily require hard caps or other mechanisms to close the fishery. In this regard, hard caps are only required if NMFS determines such measures are necessary or appropriate to mitigate the amount or extent of take. In the BiOp, NMFS determined that a leatherback hard cap was necessary and appropriate to minimize impacts of incidental take and required that a fleet-wide limit of 16 to be implemented under terms and conditions in the BiOp, but did not find that a hard cap limit or other mechanisms for closing the fishery for loggerhead turtle interactions was either necessary or appropriate. However, the loggerhead hard cap would continue to be available as a management tool under the Pelagic FEP through future Council or NMFS action if necessary to conserve the species.

Also under this final rule, vessels would still be constrained by the individual trip limit of five loggerheads as well as additional restrictions if the trip limit were reached twice in a calendar year. The individual trip limit of five loggerhead turtle interactions per trip would be expected to provide additional reductions and prevent the fishery from approaching or reaching the ITS of 36, especially in years with higher number of interactions are expected, although the extent of reduction expected from the trip limits is uncertain due to the lack of operational data.

Changes From the Proposed Rule

This final rule contains no changes from the proposed rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that Amendment 10 is necessary for the conservation and management of the Hawaii shallow-set longline fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness, otherwise required by the Administrative Procedure Act, because this rule would remove the current loggerhead annual hard cap (17) that no longer conforms to the best available scientific information in the current BiOp for the fishery. As discussed above, the 2019 BiOp determined that given the current status of the loggerhead and the implementation of the vessel trip limits, an annual hard cap for the species was no longer necessary or appropriate. As of September 8, 2020, the fishery has interacted with 13 loggerheads in 2020, and therefore is at imminent risk of exceeding the current loggerhead hard cap. Failure to implement this rule immediately would likely result in the current loggerhead hard cap of 17 being exceeded prior to peak swordfish season in October, triggering an unnecessary and disruptive fishery closure that is not supported by the BSIA. Accordingly, waiving the 30-day cooling off period is necessary to bring the current regulations into compliance with the biological opinion.

This final rule implements the reasonable and prudent measures, and terms and conditions of the BiOp NMFS completed for the fishery. The Council took final action to implement these terms and conditions in August of 2019, following the release of the final BiOp in June of 2019. Subsequently, on January 23, 2020, NMFS published an NOA for this action, including an EA, and request for public comments which ended March 23, 2020. On February 4, 2020, NMFS published a proposed rule, and that comment period ended on March 20, 2020.

Reasonable and prudent measures are actions that are necessary or appropriate to minimize the impacts, *i.e.,* amount or extent, of incidental take of loggerhead and leatherback sea turtles in the Hawaii shallow-set longline fishery. The associated terms and conditions set out the specific methods by which the reasonable and prudent measures are to be accomplished. Together, these measures must be implemented by NMFS for the take exemption in ESA section 7(o)(2) to apply to the Hawaii shallow-set longline fishery.

Since 2005, NMFS has required an annual hard cap for the fishery as a measure to control sea turtle interactions on the model shallow-set longline fishery while NMFS gathered information on the effectiveness of using circle hooks and mackerel-type bait in reducing sea turtle interactions in the fishery. The current loggerhead limit is 17. However, in light of the current abundance and increasing trend of the population, the individual vessel trip limit, and the accountability measure for vessels that might reach a trip limit twice in a calendar year, NMFS has determined that a hard cap is not necessary at this time for the conservation of the North Pacific loggerhead turtle and removing the limit would help ensure a continued supply of fresh domestic swordfish to U.S. markets. While this rule would not

require an annual loggerhead hard cap, this measure would continue to be available to NMFS and the Council as a management tool under the FEP if necessary, to conserve the species.

Furthermore, this rule also reduces the leatherback hard cap limit from 26 to 16, which represents an approximate 25 percent reduction from the ITS, to minimize the impacts, *i.e.,* amount or extent, of incidental take. This term and condition for Reasonable and Prudent Measure 1 in the 2019 BiOp must be immediately undertaken by NMFS for the take exemption in ESA section 7(o)(2) to apply.

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

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

NMFS initiated formal ESA section 7 consultation for the continued authorization of the fishery on April 20, 2018. In a BiOp dated June 26, 2019, the Regional Administrator determined that fishing activities conducted under FEP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species.

List of Subjects in 50 CFR Part 665

Hawaii, Leatherback sea turtle, Pelagic longline fishing, North Pacific loggerhead sea turtle.

Dated: September 9, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.802 revise paragraphs (ss) and (tt) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set longline fishery has been closed, or upon notice that that the vessel is restricted from fishing, in violation of § 665.813(b) and (i).

(tt) Fail to immediately retrieve longline fishing gear upon notice that the shallow-set longline fishery has been closed, or upon notice that that the vessel is restricted from fishing, in violation of § 665.813(b).

* * * * *

■ 3. In § 665.813 revise paragraphs (b) and (i) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(b) *Limits on sea turtle interactions in the shallow-set longline fishery*—(1) *Fleet Limits.* There are limits on the maximum number of allowable physical interactions that occur each year between leatherback sea turtles and vessels registered for use under Hawaii longline limited access permits while engaged in shallow-set fishing.

(i) The annual fleet limit for leatherback sea turtles (*Dermochelys coriacea*) is 16.

(ii) Upon determination by the Regional Administrator that the shallow-set fleet has reached the limit during a given calendar year, the Regional Administrator will, as soon as practicable, file for publication at the Office of the Federal Register a notification that the fleet reached the limit, and that shallow-set fishing north of the Equator will be prohibited beginning at a specified date until the end of the calendar year in which the limit was reached.

(2) *Trip limits.* There are limits on the maximum number of allowable physical interactions that occur during a single fishing trip between leatherback and North Pacific loggerhead sea turtles and individual vessels registered for use under Hawaii longline limited access permits while engaged in shallow-set fishing. For purposes of this section, a shallow-set fishing trip commences when a vessel departs port, and ends when the vessel returns to port, regardless of whether fish are landed. For purposes of this section, a calendar year is the year in which a vessel reaches a trip limit.

(i) The trip limit for leatherback sea turtles is 2, and the trip limit for North Pacific loggerhead sea turtles (*Caretta caretta*) is 5.

(ii) Upon determination by the Regional Administrator that a vessel has reached either sea turtle limit during a single fishing trip, the Regional Administrator will notify the permit holder and the vessel operator that the vessel has reached a trip limit, and that the vessel is required to immediately retrieve all fishing gear and stop fishing.

(iii) Upon notification, the vessel operator shall immediately retrieve all fishing gear, stop fishing, and return to port.

(iv) A vessel that reaches a trip limit for either turtle species during a calendar year shall be prohibited from engaging in shallow-set fishing during the 5 days immediately following the vessel's return to port.

(v) A vessel that reaches a trip limit a second time during a calendar year, for the same turtle species as the first instance, shall be prohibited from engaging in shallow-set fishing for the remainder of that calendar year. Additionally, in the subsequent calendar year, that vessel shall be limited to an annual interaction limit for that species, either 2 leatherback or 5 North Pacific loggerhead sea turtles. If that subsequent annual interaction limit is reached, that vessel shall be prohibited from engaging in shallow-set fishing for the remainder of that calendar year.

(vi) Upon determination by the Regional Administrator that a vessel has reached an annual interaction limit, the Regional Administrator will notify the permit holder and the vessel operator that the vessel has reached the limit, and that the vessel is required to immediately stop fishing and return to port.

(vii) Upon notification, the vessel operator shall immediately retrieve all fishing gear, stop fishing, and return to port.

* * * * *

(i) A vessel registered for use under a Hawaii longline limited access permit may not be used to engage in shallow-setting north of the Equator any time during which shallow-set fishing is prohibited pursuant to paragraphs (b)(1) or (2) of this section.

* * * * *

[FR Doc. 2020–20304 Filed 9–16–20; 8:45 am]

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Proposed Rules

Federal Register

Vol. 85, No. 181

Thursday, September 17, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2, 3, and 4

[Docket No. APHIS–2019–0001]

RIN 0579–AE54

AWA Research Facility Registration Updates, Reviews, and Reports

AGENCY: Animal and Plant Health Inspection Service, Agriculture Department (USDA).

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act (AWA) regulations governing research facilities by removing duplicative and unnecessary information requirements. We would remove the requirement that registered research facilities update their registration information every 3 years. We also propose to remove the requirement for continual, but not less than annual, review of research animal use activities and replace it with a requirement for a complete review at least every 3 years, and to no longer require that research facilities request an inactive status if they no longer use, handle, or transport AWA covered animals. In addition, we propose to clarify the duration of a registration and conditions for its cancellation, and to no longer require that the Institutional Official or Chief Executive Officer sign the annual report. We would also make miscellaneous changes to improve readability. The changes we propose would reduce duplicative requirements and administrative burden on research facilities, maintain research integrity and oversight, and ensure that research animals continue to receive humane care.

DATES: We will consider all comments that we receive on or before November 16, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0001, 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-2019-0001* or in our reading room, which is located in room 1620 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: Dr. Kay Carter-Corker, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road, Suite 6D–03E, Riverdale, MD 20737; (301) 851–3748; *kay.a.carter-corker@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Definitions, regulations, and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 provides administrative regulations and sets forth institutional responsibilities for regulated parties. Part 3 provides standards for the humane handling, care, treatment, and transportation of covered animals. Part 4 addresses rules of practice governing proceedings under the AWA.

Within 9 CFR part 2, § 2.30 includes specific registration requirements for research facilities, including provisions for updating and changing a registration status. Section 2.31 lists membership criteria, requirements, and functions of the Institutional Animal Care and Use Committee (IACUC), which is appointed by the Chief Executive Officer of the research facility and entrusted with assessing the research facility's animal program, facilities, and procedures. IACUC requirements include conducting continual reviews of research activities involving animals, but not less than annually. Section 2.36(a) contains requirements for submitting annual reports to APHIS.

Title II, Section 2034(d) of the 2016 21st Century Cures Act (21CCA) [1] directed the National Institutes of Health (NIH), in collaboration with the Food and Drug Administration (FDA) and the USDA, to review regulations and policies for the care and use of laboratory animals and revise them appropriately to reduce administrative burden on investigators while maintaining the integrity and credibility of research findings and protection of research animals.

Among its directives, the 21CCA tasked these Agencies to identify inconsistent, overlapping, and unnecessarily duplicative regulations and policies associated with research using laboratory animals, and to look for ways to reduce administrative burden and simplify the regulations. NIH, USDA, and FDA formed a Working Group to collaborate on these tasks. Group members researched and analyzed current regulations and policies, held listening sessions with stakeholders and organizations, and issued a Request for Information.[2] After analyzing the research data and the comments received, the Working Group issued a report [3] recommending ways to

[1] *https://www.congress.gov/bill/114th-congress/house-bill/34/.*

[2] NIH, Office of Laboratory Animal Welfare, ''Request for Information: Animal Care and Use in Research,'' March 2018 (NOT–OD–18–152). Available at *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-18-152.html.*

[3] NIH, FDA, and USDA, ''Reducing Administrative Burden for Researchers: Animal Care and Use in Research,'' August 2019. Available at *https://olaw.nih.gov/sites/default/files/21CCA_final_report.pdf.*

reduce the regulatory burden associated with research activities involving laboratory animals in several areas, including registration of research facilities, institutional reporting, and reviews of research activities that use animals. This proposed rule addresses the recommendations specific to the USDA AWA regulations.

Proposed Changes to the AWA Regulations

APHIS is proposing several changes to 9 CFR part 2 to address the reforms called for in the 21CCA and in Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,''[4] which tasks Federal agencies to review regulations and consider modifying, streamlining, or repealing those that are unnecessary or that impose administrative burdens or excessive costs on regulated entities. The changes we propose, detailed below, would remove or reduce registration, reporting, and review requirements of activities involving animals on research facilities registered under the AWA.

Registration of Research Facilities

Section 2.30(a)(1) currently requires that each research facility other than a Federal research facility register with the Secretary by completing and filing a registration form with the Animal Care (AC) Regional Director[5] for the State in which the research facility has its principal place of business. A facility's registration must be updated every 3 years by completing and filing a registration update form provided by the AC Regional Director. The registration form includes fields for the registrant's name, address, and contact information; USDA registration certificate numbers in which the registrant has an interest; names of partners, officers, and the institutional official; and a checklist for the types of animals used at the facility. USDA instituted the requirement to update the registration every 3 years to account for considerable turnover of research facility executive personnel and changes to research activities. The Department also established a procedure whereby a registrant can be placed in an inactive status after a period of 2 years during which no animals have been used, handled, or transported, and established a procedure by which a registrant which ceases to operate as a research facility, carrier, intermediate handler, or exhibitor, or which goes out of business, can request in writing to have its registration canceled.

We propose to amend § 2.30(a)(1) to eliminate the requirement to update the research facility registration every 3 years. We have determined that this requirement is burdensome and unnecessarily duplicative because, under § 2.30(c), facilities are already required to notify APHIS of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, within 10 days after making such change. Research facilities may use APHIS Form 7033-Notification of Change to provide this information.

Section 2.30(c)(2) provides that a research facility that has not used, handled, or transported animals for a period of at least 2 years, and that wishes to be placed in an inactive status, must make a written request to the AC Regional Director and file an annual report of its status (active or inactive).

Each fiscal year, a small number of research facilities become inactive or are otherwise no longer subject to submitting an annual report of animal use information. We have reviewed the AWA regulations applicable to such research facilities that no longer use, handle, or transport animals covered under the Act, and determined that the requirement in § 2.30(c)(2) pertaining to requesting an inactive status and filing of an annual report constitutes an unnecessary and excessive burden to these facilities. For this reason, we propose to remove this requirement. Facilities would no longer be in active or inactive status, but instead would either be registered or unregistered. This change would reduce administrative burden associated with animal facilities that no longer use, handle, or transport animals having to request inactive status or submit an annual report of animal use. Under proposed § 2.30(d), detailed below, an inactive research facility would have its registration canceled. In order to resume operation or otherwise conduct regulated activities in the future, such a facility would need to submit a form to reregister at least 10 days prior to using, handling, or transporting animals.

Paragraph (c)(1) of § 2.30, which requires research facilities to notify APHIS of any change in the name, address, or ownership, or other changes in operations affecting its status as a research facility within 10 days after making any such change, would remain as redesignated paragraph (c). We would modify the paragraph to inform research facilities that they may use APHIS Form 7033-Notification of Change to provide the information.

Section 2.30(c)(3) includes provisions for a research facility to cancel its registration when going out of business, ceasing to function as a research facility, or changing its method of operation so that it no longer uses or plans to use, handle, or transport animals. We would move these provisions to a new paragraph (d) in § 2.30.

Duration of Registration and Conditions for Cancellation of a Registration

We would redesignate paragraph (d) in current § 2.30 as paragraph (e) and add a new paragraph (d) that clarifies the duration of a research facility's registration and conditions for its cancellation.

In paragraph (d)(1), we would retain the current provision that a registration will be canceled if a research facility voluntarily requests cancellation, in writing, to the Deputy Administrator. We would also retain the provision that a registration will be canceled if the research facility notifies the Deputy Administrator that it has gone out of business, ceases to function as a research facility, or has changed its method of operation so that it no longer uses, handles, or transports animals, and does not plan to use, handle, or transport animals at any time in the future.

Additionally, we propose to add a provision in paragraph (d)(2) that the Deputy Administrator may initiate cancellation of a research facility's registration if there is reason to believe that it has ceased to function as a research facility. Before making a decision to cancel a facility's registration on these grounds, the Deputy Administrator would consider evidence of business inactivity, which could include but not be limited to multiple unsuccessful attempts to contact the facility by phone or mail, or no activity at the physical address listed in the registration. Therefore, we propose that the Deputy Administrator may cancel a registration if sufficient evidence exists that a facility has changed its method of operation so that it no longer uses, handles, or transports animals, and does not plan to use, handle, or transport animals at any time in the future, or that otherwise no longer meets the definition of *research facility* in § 1.1.

[4] Published in the **Federal Register** on March 1, 2017. Available at *https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda.*

[5] As part of a program reorganization, the AC Regional Director position has been retired. Duties and responsibilities formerly under the purview of the AC Regional Directors are now under the Deputy Administrator in all 50 States. In a final rule published May 13, 2020 (85 FR 28772–28799; Docket No. APHIS–2017–0062) and effective November 9, 2020, we amended the regulations in part 2 to remove the term ''AC Regional Director'' and replace it with ''Deputy Administrator.''

We would include in proposed paragraph (d)(3) the provision that if a research facility registration has been canceled but the research facility wishes to resume operations or otherwise conduct regulated activities in the future, the facility is responsible for submitting an application to reregister at least 10 days prior to it using, handling, or transporting animals. There would be no fees associated with such reregistration.

IACUC Review of Activities Involving Animals

Section 2.31 lists the functions, requirements, and committee membership criteria for the IACUC. Each research facility is required to establish an IACUC, the functions of which include reviewing and reporting on the facility's animal program, facilities, procedures, and activities involving animals.

Section 2.31(d) requires the IACUC to conduct reviews of activities involving the care and use of research animals and to determine whether the activities are in accordance with the AWA regulations. Under the process detailed in § 2.31(d), the IACUC conducts reviews of these activities and notifies the principal investigators and the research facility in writing of its decision to approve or withhold approval of activities related to the care and use of animals, or of modifications required to secure IACUC approval. Paragraph (d)(5) in § 2.31 requires the IACUC of each research facility to conduct continuing reviews of such activities covered under subchapter A, Animal Welfare, at appropriate intervals as determined by the IACUC, but not less than annually.

We propose to amend § 2.31(d)(5) to remove the requirement for the IACUC continuing reviews of activities covered by subchapter A, but not less than annually, and replace it with the requirement for the IACUC to conduct a complete review of approved activities at appropriate intervals as determined by the IACUC, but not less than every 3 years.

The continuing reviews served the purpose to monitor animal care and use activities to ensure they are performed as approved by the IACUC. Changes sometimes occur during the life cycle of an approved activity, such as but not limited to personnel, species, study objectives, and frequency of sample collections. The proposed complete review is intended to thoroughly examine the current and proposed animal care and use activities. The principal investigator would provide the IACUC with a written description of all current and proposed activities that involve the care and use of animals for review and approval at the end of the 3-or-less-year term. This proposed change to a complete review does not affect the IACUC's authority to conduct such monitoring when deemed necessary, as described in § 2.31. The intended goal of this change is to reduce administrative burdens on investigators, IACUC members, attending veterinarians, and other related facility staff who conduct research activities involving animals. The change would result in an activity involving animals remaining approved for the interval approved by the IACUC, not to exceed 3 years, after the IACUC's complete review, unless the IACUC suspends the activity pursuant to § 2.31(d)(6). Finally, the change harmonizes with the NIH requirement for a complete review of IACUC-approved activities at 3-year intervals for federally funded research under NIH oversight[6] and reduces burden by establishing a consistent review cycle of the activities involving animals for all AWA-registered research facilities.

Annual Report

The regulations in § 2.36(a) contain requirements for submitting annual reports to APHIS. Each reporting facility—*i.e.,* that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, experiments, or for teaching—is required to submit an annual report to the AC Regional Director for the State where the facility is located on or before December 1 of each calendar year. The annual report must be signed and certified by the Chief Executive Officer (CEO) or Institutional Official (IO) and cover the previous Federal fiscal year.

We propose to amend § 2.36(a) to eliminate the requirement for CEO and IO signatures on the paper version of the annual report. This guards against identity theft through written signatures. It also allows for the facility representative to electronically submit the annual report on behalf of the CEO or IO while maintaining the assurance requirements regarding the content of the annual report and practices at the research facility. A separate signed hard copy of the annual report would not be required. We would also modify § 2.36(a) to inform registered research facilities and Federal research facilities that APHIS Form 7023, 7023A, and 7023B are forms which may be used by registered research facilities and Federal research facilities to submit the information required by § 2.36(b).

Miscellaneous

In parts 2, 3, and 4 of the current regulations, we propose to make minor corrections in punctuation and wording to improve readability. In § 2.38, we propose to amend paragraph (g)(1) by correcting punctuation. In paragraphs (f)(6) and (7) of § 3.111, we propose to remove extraneous punctuation and wording. In §§ 4.10 and 4.11, we propose to add pronouns that are more inclusive.

Executive Orders 12866, 13563, and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This proposed rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the proposed actions are intended to reduce duplicative and unnecessary administrative burden on AWA-registered research facilities while ensuring the integrity and credibility of research findings and protection of research animals.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

[6] Public Health Service policy requires ''continuing review of each previously approved, ongoing activity covered by this Policy at appropriate intervals as determined by the IACUC, including a complete review in accordance with IV.C–4 at least once every three years.'' Available at *https://olaw.nih.gov/policies-laws/phs-policy.htm.*

Section 2034(d) of the 21st Century Cures Act, ''Reducing Administrative Burden for Researchers: Animal Care and Use in Research,'' directed the Director of National Institutes of Health, the Secretary of Agriculture, and the Commissioner of Food and Drugs to reduce administrative burden on investigators by identifying and reducing inconsistent, overlapping, or duplicative regulations and policies while ensuring the integrity and credibility of research findings and protection of research animals.

Accordingly, APHIS is proposing changes to §§ 2.30, 2.31, and 2.36 of the Animal Welfare regulations:

Registration

- *Section 2.30(a)(1):* Eliminate the requirement for research facility registration updates at 3-year intervals;
- *Section 2.30(c):* Eliminate the requirement for a research facility to request being placed on inactive status if the facility has not used, handled, or transported animals for a period of at least 2 years;
- *Section 2.30(d):* Clarify the duration of a registration and conditions for cancellation of a registration;

IACUC

- *Section 2.31(d)(5):* Replace continuing annual reviews of activities involving animals approved by the IACUC with reviews and approval by the IACUC at intervals not exceeding 3 years; and

Annual Report

- *Section 2.36(a):* Eliminate the requirement for Chief Executive Officer and Institutional Official signatures on the reporting facility annual report.

APHIS has quantified annual savings for facilities that total approximately $80,000 from the proposed changes in § 2.30(a)(1) and approximately $11,000 from the proposed change in § 2.36(a), respectively. APHIS also expects that the proposed changes in § 2.30(c)(2) and (3) would reduce administrative burden of certain inactive research facilities. APHIS conservatively estimates that the proposed change in § 2.31(d)(5) would be cost neutral as no quantifiable information is available to show expected net cost savings from the change.

These proposed changes are intended to reduce administrative burden on investigators, IACUC members, attending veterinarians, and other related facility staff, and would not affect the Animal Welfare regulations that ensure humane animal care during research, testing, experiments, or teaching. Facilities covered by this proposed rule include small entities. APHIS requests that the public provide any information that may strengthen this analysis of expected economic effects.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act provides administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection activities in this proposed rule are included under the Office of Management and Budget (OMB) control number 0579–0036, which has been submitted to OMB for approval.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Specialist, at (301) 851–2483.

List of Subjects

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

9 CFR Part 4

Administrative practice and procedure, Animal welfare.

Accordingly, we propose to amend 9 CFR parts 2, 3, and 4 as follows:

PART 2—REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 2.30 is amended as follows:
■ a. By revising paragraphs (a)(1) and (c);
■ b. By redesignating paragraph (d) as paragraph (e);
■ c. By adding a new paragraph (d); and
■ d. By adding a heading for newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 2.30 Registration.

(a) * * *

(1) Each research facility, other than a Federal research facility, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Deputy Administrator. The registration form shall be filed with the Deputy Administrator. Except as provided in paragraph (a)(2) of this section, where a school or department of a university or college uses or intends to use live animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

* * * * *

(c) *Notification of change of operation.* A research facility shall notify the Deputy Administrator by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, within 10 days after making such change. The Notification of Change form (APHIS Form 7033) may be used to provide the information.

(d) *Duration of a registration and conditions for cancellation of a registration.* (1) A research facility that goes out of business or ceases to function as a research facility, or that changes its method of operation so that it no longer uses, handles, or transports animals, and does not plan to use, handle, or transport animals at any time in the future, may have its registration canceled by making a written request to the Deputy Administrator.

(2) If the Deputy Administrator has reason to believe that a research facility has ceased to function as a research facility, then the Deputy Administrator may cancel the registration on its own,

without a written request from the research facility.

(3) If a research facility resumes operation or otherwise wishes to conduct regulated activities in the future, the facility is responsible for submitting a form to reregister at least 10 days prior to it using, handling, or transporting animals. There are no fees associated with such reregistration.

(e) *Non-interference with APHIS officials.* * * *

■ 3. In § 2.31, paragraph (d)(5) is revised to read as follows:

§ 2.31 Institutional Animal Care and Use Committee (IACUC).

* * * * *

(d) * * *

(5) The IACUC shall conduct complete reviews of activities covered by this subchapter at appropriate intervals as determined by the IACUC, but not less than every 3 years. The IACUC shall be provided a written description of all proposed activities that involve the care and use of animals for review and approval at the end of the term;

* * * * *

■ 4. In § 2.36, paragraph (a) is revised to read as follows:

§ 2.36 Annual report.

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the Deputy Administrator on or before December 1 of each calendar year. The report shall cover the previous Federal fiscal year. The Annual Report of Research Facility (APHIS Form 7023), Continuation Sheet for Annual Report of Research Facility (APHIS Form 7023A), and Annual Report of Research Facility Column E Explanation (APHIS Form 7023B) are forms which may be used to submit the information required by paragraph (b) of this section.

* * * * *

§ 2.38 [Amended]

■ 5. In § 2.38, paragraph (g)(1) introductory text is amended by removing the period after the word ''acquired'' and adding a comma in its place.

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

§ 3.111 [Amended]

■ 7. Section 3.111 is amended in paragraphs (f)(6) and (7) by removing '', which''.

PART 4—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE ANIMAL WELFARE ACT

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

Authority: 7 U.S.C. 2149 and 2151; 7 CFR 2.22, 2.80, and 371.7.

§ 4.10 [Amended]

■ 9. In § 4.10, paragraph (a) is amended by removing the words ''he'' and ''his'' and adding the words ''he or she'' and ''his or her'' in their places, respectively.

§ 4.11 [Amended]

■ 10. In § 4.11, paragraph (a) introductory text is amended by removing the word ''his'' and adding the words ''his or her'' in its place.

Done in Washington, DC, this 9th day of September 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–20512 Filed 9–16–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0818; Project Identifier MCAI–2020–00987–A]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–24 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as electrical harness installations on PC–24 airplanes that are not in compliance with the approved design. This unsafe condition could lead to wire chafing and potential arcing or failure of wires having the incorrect length, possibly resulting in loss of system redundancy, or generation of smoke and smell, or loss of power plant fire protection function. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- For service information identified in this NPRM, contact Pilatus Aircraft Ltd., CH–6371, Stans, Switzerland; telephone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* internet: *https://www.pilatus-aircraft.com/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call 816–329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0818.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0818; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0818; Project Identifier MCAI–2020–00987–A'' at the beginning of your comments. The FAA will consider all comments received by the closing date and may amend this proposed AD because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact it receives about this proposed AD.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union Community, has issued EASA AD No. 2020–0158, dated July 16, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition on certain Pilatus Aircraft Ltd. (Pilatus) Model PC–24 airplanes. The MCAI states:

> During production, electrical harness installations on some PC–24 aeroplanes were found not to comply with the approved design.
>
> This condition, if not corrected, could lead to wire chafing and potential arcing, or to failure of wires having the incorrect length, possibly resulting in loss of system redundancy, or generation of smoke and smell, or loss of power plant fire protection function.
>
> To address this potential unsafe condition, Pilatus issued the [service bulletin] SB, providing instructions to improve the electrical harness installations in the nose bay, cockpit, fuselage, wing fairing and rear fuselage areas.
>
> For the reason described above, this [EASA] AD requires modification of the electrical harness installations.

The incorrect length wires are too short in length and do not have appropriate slack, which could lead to wires being pulled loose from the terminals during flight or ground operation. Generation of smell refers to the smell from electrical arcing.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0818.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus PC–24 Service Bulletin No. 91–001, dated April 7, 2020. The service information specifies procedures necessary to improve the electrical harness installation in the nose bay, cockpit, avionics rack, fuselage, wing fairing, and rear fuselage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

The FAA estimates that this proposed AD would affect ≪Number_of_Aircraft≫ products of U.S. registry. The FAA also estimates that it would take 20 work-hours per product to comply with the requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about ≪Inspect_Parts≫ per product.

Based on these figures, the FAA estimates the cost of the proposed AD on U.S. operators would be ≪Fleet_Cost≫, or $1,775 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2020–0818; Project Identifier MCAI–2020–00987–A.

(a) Comments Due Date

The FAA must receive comments by November 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–24 airplanes, serial numbers 101 through 160 inclusive, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2497, ELECTRICAL POWER SYSTEM WIRING; 3197, INSTRUMENT SYSTEM WIRING.

(e) Unsafe Condition

This AD was prompted by electrical harness installations on some PC–24 airplanes in production that did not comply with the approved design. The FAA is issuing this AD to prevent wire chafing and potential arcing or failure of wires having the incorrect length. The unsafe condition, if not addressed, could result in loss of system redundancy, electrical arcing, or loss of power plant fire protection.

(f) Actions and Compliance

Unless already accomplished, during the next annual inspection after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs later, modify the electrical harness installation in accordance with sections 3.A. through 3.H. of Accomplishment Instructions in Pilatus PC–24 Service Bulletin No. 91–001, dated April 7, 2020.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

(2) Refer to MCAI European Union Aviation Safety Agency (EASA) AD No. 2020–0158, dated July 16, 2020, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0818.

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., CH–6371, Stans, Switzerland; telephone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* internet: *https://www.pilatus-aircraft.com/.* You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on September 11, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20485 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0842; Product Identifier 2020–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Yaborã Indústria Aeronáutica S.A. (Type Certificate Previously Held by Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Yaborã Indústria Aeronáutica S.A. Model ERJ 170 airplanes and Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This proposed AD was prompted by reports of installation of inverted poles of the horizontal stabilizer pitch trim switches on the control yokes, which causes opposite commands for the horizontal stabilizer. This proposed AD would require installing supports for the horizontal stabilizer control yoke pitch trim switches and re-identifying the control yokes, as specified in two Agência Nacional de Aviação Civil (ANAC) ADs, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, BRAZIL, Tel: 55 (12) 3203–6600; Email: *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0842.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0842; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; *Krista.Greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0842; Product Identifier 2020–NM–101–AD'' at the beginning of your comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2020–05–01, effective May 26, 2020; and ANAC AD 2020–05–02, effective May 26, 2020 (''ANAC AD 2020–05–01'' and ''ANAC AD 2020–05–02'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''); to correct an unsafe condition for certain Yaborã Indústria Aeronáutica S.A. Model ERJ 170 airplanes and Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –100 SR, –200 STD, –200 LR, and –200 IGW airplanes. Model ERJ 190–100 SR airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by reports of installation of inverted poles of the horizontal stabilizer pitch trim switches on the control yokes, which causes opposite commands for the horizontal stabilizer. The FAA is proposing this AD to address this condition, which could result in reduced controllability of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

ANAC AD 2020–05–01 and ANAC AD 2020–05–02 describe procedures for installing supports for the horizontal stabilizer control yoke pitch trim switches and re-identifying the control yokes. These documents are distinct since they apply to different airplane models. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in ANAC AD 2020–05–01 and ANAC AD 2020–05–02 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and the European Union Aviation Safety Agency (EASA) to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, ANAC AD 2020–05–01 and ANAC AD 2020–05–02 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2020–05–01 and ANAC AD 2020–05–02 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in ANAC AD 2020–05–01 and ANAC AD 2020–05–02 that is required for compliance with ANAC AD 2020–05–01 and ANAC AD 2020–05–02 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0842 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 324 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 7 work-hours × $85 per hour = $595	Up to $267	Up to $862	Up to $279,288.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Yaborã Indústria Aeronáutica S.A. (Type Certificate Previously Held by Embraer S.A.): Docket No. FAA–2020–0842; Product Identifier 2020–NM–101–AD.

(a) Comments Due Date

The FAA must receive comments by November 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Yaborã Indústria Aeronáutica S.A. Model airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 SU, –200 STD, and –200 LL airplanes, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2020–05–01, effective May 26, 2020 (''ANAC AD 2020–05–01'').

(2) Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes, as identified in ANAC AD 2020–05–02, effective May 26, 2020 (''ANAC AD 2020–05–02'').

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of installation of inverted poles of the horizontal stabilizer pitch trim switches on the control yokes, which causes opposite commands for the horizontal stabilizer. The FAA is issuing this AD to address this condition, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2020–05–01 and ANAC AD 2020–05–02, as applicable.

(h) Exceptions to ANAC AD 2020–05–01 and ANAC AD 2020–05–02

(1) Where ANAC AD 2020–05–01 and ANAC AD 2020–05–02 refer to their effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative method of compliance (AMOC)'' section of ANAC AD 2020–05–01 and ANAC AD 2020–05–02 does not apply to this AD.

(3) Where ANAC AD 2020–05–01 and ANAC AD 2020–05–02 prohibit installing certain parts, this AD prohibits their installation as of the applicable compliance time specified by paragraph (h)(3)(i) or (ii) of this AD.

(i) If the modification required by this AD was done before the effective date of this AD, installation is prohibited as of the effective date of this AD.

(ii) If the modification required by this AD is done after the effective date of this AD, installation is prohibited after accomplishment of the modification required by this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Related Information

(1) For information about ANAC AD 2020–05–01 and ANAC AD 2020–05–02, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch

(GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, BRAZIL, Tel: 55 (12) 3203–6600; Email: *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0842.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; *Krista.Greer@faa.gov.*

Issued on September 10, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20376 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0792; Product Identifier 2018–SW–049–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This proposed AD was prompted by seven incidents of fatigue cracks in the horizontal stabilizer root fitting FWD (forward root fitting). This proposed AD would require establishing the life limit of certain part-numbered forward root fittings, establishing the life limit of certain part-numbered stabilizer strut fittings, repetitively inspecting certain parts, and depending on the inspection results, removing parts from service. This proposed AD would also prohibit the installation of certain parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800-Winged-S); email *wcs_cust_service_eng.gr-sik@lmco.com.* Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0792; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, 1200 District Avenue, Burlington, Massachusetts 01803; telephone 781–238–7693; email *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dorie Resnik, Aviation Safety Engineer, Boston ACO Branch, 1200 District Avenue, Burlington, Massachusetts 01803; telephone 781–238–7693; email *dorie.resnik@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA proposes to adopt a new AD for Sikorsky Model S–92A helicopters with certain part-numbered horizontal stabilizer assemblies (stabilizer assembly), certain part-numbered forward root fittings, or certain part-numbered stabilizer strut fittings installed. This proposed AD was prompted by seven incidents of fatigue cracks in forward root fittings. Fatigue cracking in a forward root fitting degrades the load path and increases the load on other assembly parts,

particularly at the aft horizontal stabilizer attachment points.

This proposed AD would require establishing the life limit of certain part-numbered forward root fittings and certain part-numbered stabilizer strut fittings. This proposed AD would also require repetitively inspecting each stabilizer assembly attachment bolt and barrel nut set, each forward root fitting, each attachment fitting including the bolt holes and fastener holes, condition of the fasteners, and each attachment fitting mating surface. Depending on the inspection results, this proposed AD would require removing parts from service. Finally, this proposed AD would prohibit installing certain stabilizer assemblies on any helicopter.

The proposed actions are intended to prevent a forward root fitting remaining in service beyond its fatigue life, detect fatigue cracking in a forward root fitting, and prevent increased load and stress cracking in the stabilizer root fitting aft. This condition, if not addressed, could result in failure of a forward root fitting, separation of the stabilizer assembly from the helicopter, and subsequent loss of control of the helicopter.

Related Service Information Under 1 CFR Part 51

The FAA reviewed S–92 Maintenance Manual, SA S92A–AMM–000, Temporary Revision (TR) 55–33, dated March 24, 2020 (TR 55–33), which adds additional part numbers (P/N) to the Horizontal Stabilizer—Maintenance Practices and specifies procedures for inspecting each forward root fitting and aft root fitting bolt holes and fasteners, each forward and aft root fitting mating surface for wear of the abrasion-resistant Teflon coating, procedures for chemically striping the abrasion-resistant Teflon coating from the entire mounting pad, applying alodine, and applying an abrasion-resistant Teflon coating. This service information also describes procedures for removing and installing a stabilizer (Tasks 55–11–01–900–001 and 55–11–01–900–002), checking the torque stabilization (Task 55–11–01–280–001), and inspecting the stabilizer and attaching hardware (Task 55–11–01–210–004). This service information also provides assembly diagrams and lists interchangeable stabilizer P/Ns and compatible strut P/Ns.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed S–92 Maintenance Manual SA S92A–AWL–000, TR No. 4–58, dated October 2, 2017 (TR 4–58), and S–92 Maintenance Manual SA S92A–AWL–000, TR No. 4–66 dated November 20, 2019 (TR 4–66). This service information revises Task 4–00–00–200–000, Table 1 Replacement Schedule, dated November 30, 2015. Both TR 4–58 and 4–66 revise the Airworthiness Limitations Schedule by removing certain part-numbered components, introducing new part-numbered components, and establishing replacement intervals and recurring inspections for the forward root fitting and the horizontal stabilizer strut fitting. TR 4–58 also specifies inspecting the horizontal stabilizer and attaching hardware at a recurring interval of 250 hours time in service (TIS).

FAA's Determination

The FAA is proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other helicopters of the same type design.

Proposed AD Requirements

This proposed AD would require determining the total hours TIS of the forward root fitting and the stabilizer strut fitting. This proposed AD would require establishing a life limit of 7,900 hours TIS for certain part-numbered forward root fittings and establishing a life limit of 19,100 hours TIS for stabilizer strut fitting P/N 92070–20117–041. This proposed AD would also require for certain part-numbered stabilizer strut fittings installed, repetitively inspecting the following at intervals not to exceed 50 hours TIS:

- The hat bushing and both upper and lower fittings for a crack, corrosion, fretting, deformation, and wear.
- Both upper and lower support strut rod ends, including lug and conical fitting, and both upper and lower attachment fittings on the stabilizer and pylon, including the bushings, for a crack, corrosion, fretting, deformation, and wear.

This proposed AD would also require repetitively inspecting the following at intervals not to exceed 250 hours TIS or one year, whichever occurs first:

- Each stabilizer attachment bolt and barrel nut set for corrosion, a crack, and damage to the threads indicated by uneven threads, missing threads, or cross-threading.
- Each forward root fitting and aft attachment fitting, including inspecting the bolt holes and fastener holes for a crack, wear, and corrosion, or as an alternative to detect cracks, fluorescent penetrant inspecting (FPI) the area.
- Each forward and aft attachment fitting mating surface for wear of the abrasion-resistant Teflon coating and degradation. For the purposes of this inspection, degradation may be indicated by fretting. If there is any wear of the coating or fretting, this proposed AD would require stripping the coating and performing a FPI or eddy current inspection to inspect for a crack. If there are no cracks, this proposed AD would require recoating the surfaces.

Depending on the inspection results, this proposed AD would require removing parts from service before further flight.

Finally, this proposed AD would prohibit installing stabilizer assembly P/N 92205–07400–043, 92205–07400–045, and 92205–07400–047 on any helicopter.

Differences Between This Proposed AD and the Service Information

The service information requires returning affected parts to a Sikorsky specialist; this proposed AD would not.

Costs of Compliance

The FAA estimates that this proposed AD would affect 85 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Visually inspecting the stabilizer assembly and attached hardware would take about 3 work-hours for an estimated cost of $255 per helicopter and $21,675 for the U.S. fleet per inspection cycle.

If required, replacing a hat bushing and both upper fittings and lower fittings would take about 1 work-hour and parts would cost about $10,000 for an estimated cost of $10,085 per replacement.

If required, replacing the upper and lower support strut rod ends, including lug and conical fitting, would take about 1 work-hour and parts would cost about $10,000 for an estimated cost of $10,085 per replacement.

If required, performing a fluorescent penetrant inspection would take about 3 work-hours for an estimated cost of $255 per inspection.

If required, replacing a stabilizer assembly would take about 6 work-hours and parts would cost about $312,000 for an estimated cost of $312,510 per replacement.

If required, replacing a forward root fitting would take about 10 work-hours and parts would cost about $25,000 for

an estimated cost of $25,850 per replacement.

If required, replacing a stabilizer strut fitting would take about 10 work-hours and parts would cost about $10,000 for an estimated cost of $10,850 per replacement.

If required, replacing a forward root fitting and an aft attachment fitting would take about 20 work-hours and parts would cost about $50,000 for an estimated cost of $51,700 per replacement.

If required, removing wear or corrosion and applying corrosion preventative compound would take about 0.5 work-hour and parts would cost a nominal amount for an estimated cost of $43 per action.

If required, replacing a stabilizer attachment bolt and barrel nut set would take about 1 work-hour and parts would cost about $500 for an estimated cost of $585 per replacement.

If required, replacing a fastener would take about 0.1 work-hour and parts would cost a nominal amount for an estimated cost of $9 per fastener.

If required, removing the abrasion-resistant Teflon coating to inspect each forward and aft attachment fitting mating surface would take about 5 work-hours for an estimated cost of $425 per inspection.

If required, applying alodine or equivalent and applying abrasion-resistant Teflon coating would take about 5 work hours with minimal parts cost for an estimated cost of $425 per application.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

2. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. FAA–2020–0792; Product Identifier 2018–SW–049–AD.

(a) Comments Due Date

The FAA must receive comments by November 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Sikorsky Aircraft Corporation Model S–92A helicopters, certificated in any category, with the following installed: Horizontal stabilizer root fitting FWD (forward root fitting) part number (P/N) 92209–07111–101 or 92070–20125–101; or stabilizer strut fitting P/N 92209–07404–041, 92209–07403–041, or 92070–20117–041 installed on horizontal stabilizer assembly (stabilizer assembly) P/N 92070–20117–045, 92070–20117–046, 92070–20125–041, 92070–20125–042, 92070–20125–043, 92070–20125–044, 92205–07400–043, or 92205–07400–045.

(d) Subject

Joint Aircraft System Component (JASC) Code: 5510, Horizontal Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by incidents of fatigue cracks in a forward root fitting and life limit recalculations for forward root fitting P/N 92209–07111–101 and 92070–20125–101. The FAA is issuing this AD to prevent a forward root fitting from remaining in service beyond its life limit, detect fatigue cracking in a forward root fitting, and prevent increased load and stress cracking in the stabilizer root fitting aft. The unsafe condition, if not addressed, could result in failure of a stabilizer root fitting, separation of the stabilizer assembly from the helicopter, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 50 hours time-in-service (TIS):

(i) Determine the total hours TIS of the forward root fitting P/N 92209–07111–101 or 92070–20125–101. If the hours TIS of the forward root fitting is unknown, use the hours TIS of the stabilizer assembly instead.

(A) If the forward root fitting has accumulated 7,900 or more total hours TIS, before further flight, remove the forward root fitting from service.

(B) If the forward root fitting has accumulated less than 7,900 total hours TIS, before exceeding 7,900 hours TIS, remove the forward root fitting from service.

(ii) Thereafter following paragraph (g)(1)(i) of this AD, remove the forward root fitting from service before accumulating 7,900 total hours TIS.

(iii) For stabilizer assemblies with stabilizer strut fitting P/N 92070–20117–041 installed, perform the following actions:

(A) Determine the total hours TIS of stabilizer strut fitting P/N 92070–20117–041.

(B) If the stabilizer strut fitting has accumulated 19,100 or more total hours TIS, before further flight, remove the stabilizer strut fitting from service.

(C) If the stabilizer strut fitting has accumulated less than 19,100 total hours TIS, before exceeding 19,100 total hours TIS, remove the stabilizer strut fitting from service.

(iv) Thereafter following paragraph (g)(1)(iii) of this AD, remove the stabilizer strut fitting from service before accumulating 19,100 total hours TIS.

(2) For helicopters with stabilizer strut fitting P/N 92209–07404–041 or 92209–07403–041 installed, within 50 hours TIS and thereafter at intervals not to exceed 50 hours TIS:

(i) Remove the support strut and using a cheese cloth (or similar cloth) and isopropyl alcohol, clean the upper and lower support

strut rod ends, horizontal stabilizer attachment fitting, and the tail rotor pylon attachment fitting.

(ii) Using a 10X or higher power magnifying glass, a flashlight, and a mirror, visually inspect the hat bushing and both upper fittings and lower fittings for a crack, corrosion, fretting, deformation, and wear. If there is a crack, corrosion, fretting, deformation, or wear, before further flight, remove the hat bushing and both upper fittings and lower fittings from service.

(iii) Using a 10X or higher power magnifying glass, a flashlight, and a mirror, visually inspect both upper and lower support strut rod ends, including lug and conical fitting, and both upper and lower attachment fittings on the stabilizer and pylon including the bushings for a crack, corrosion, fretting, deformation, and wear. If there is a crack, corrosion, fretting, deformation, or wear, before further flight, remove the upper and lower support strut rod ends, including lug and conical fitting, and both upper and lower attachment fittings on the stabilizer from service.

(3) Within 250 hours TIS or one year, whichever occurs first, and thereafter at intervals not to exceed 250 hours TIS or one year, whichever occurs first:

(i) Remove the stabilizer assembly and visually inspect each stabilizer attachment bolt and barrel nut set for corrosion, a crack, and damage to the threads. For the purposes of this inspection, damage may be indicated by uneven threads, missing threads, or cross-threading.

(A) If there is corrosion within allowable limits, before further flight, treat for corrosion in accordance with FAA-approved procedures.

(B) If there is corrosion that exceeds allowable limits, or a crack or damage to the threads, before further flight, remove the bolt and barrel nut set from service.

(ii) Inspect the forward root fitting and the aft attachment fitting by:

(A) Gaining access to the inside of the horizontal stabilizer.

(B) Using Brulin Cleaner SD 1291 (or equivalent) and a low-lint cloth, remove all traces of sealing compound, oil, and dirt from the stabilizer mounting surfaces.

(C) Using a 10X magnifying glass, inspect for any crack, wear, and corrosion.

(*1*) If there is a crack, before further flight, remove the affected forward root fitting and the affected aft attachment fitting from service.

(*2*) If there is wear or corrosion that exceeds allowable limits, before further flight, remove the affected forward root fitting and the affected aft attachment fitting from service.

(*3*) If there is wear or corrosion within allowable limits, before further flight, treat for corrosion in accordance with FAA-approved procedures.

(D) Visually inspect each attachment fitting bolt hole and fastener hole for a crack, wear, and corrosion.

(*1*) If there is a crack, before further flight, remove the affected forward root fitting and the affected aft attachment fitting from service.

(*2*) If there is wear or corrosion that exceeds allowable limits, before further flight, remove the affected forward root fitting and the affected aft attachment fitting from service.

(*3*) If there is wear or corrosion within allowable limits, before further flight, treat for corrosion in accordance with FAA approved procedures.

(E) Inspect for loose or working fasteners. If there is a loose or working fastener, before further flight, remove the fastener from service.

(iii) As an alternative means to inspect for cracks in paragraphs (g)(3)(i) and (ii) of this AD, perform a florescent penetrate inspection (FPI).

(iv) Visually inspect each forward and aft attachment fitting mating surface for wear of the abrasion-resistant Teflon coating and degradation. For the purposes of this inspection, degradation may be indicated by fretting. Refer to Figure 204, of S–92 Maintenance Manual, SA S92A–AMM–000, Temporary Revision 55–33, Task 55–11–01–210–004, dated March 24, 2020 (TR 55–33), for a depiction of the area to be inspected. For the purposes of this inspection, wear may be indicated by less than 100% coverage of the abrasion-resistant Teflon coating. If there is wear to the abrasion-resistant Teflon coating or degradation, before further flight:

(A) Chemically strip the abrasion-resistant Teflon coating from the entire mounting pad in accordance with paragraph 7.A.(7)(a) of TR 55–33.

(B) FPI or eddy current inspect for a crack. If there is a crack, before further flight, remove the stabilizer assembly from service.

(C) If there is no crack, treat the affected area by applying alodine or equivalent. Apply abrasion-resistant Teflon coating in accordance with paragraphs 7.A.(7)(d) through (e) of TR 55–33.

(4) Installing stabilizer strut fitting P/N 92070–20117–041 is a terminating action for the 50 hour TIS repetitive requirements in paragraph (g)(2) of this AD.

(5) As of the effective date of this AD, do not install stabilizer assembly P/N 92205–07400–043, 92205–07400–045, or 92205–07400–047 on any helicopter.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, 1200 District Avenue, Burlington, Massachusetts 01803; telephone 781–238–7693; email *dorie.resnik@faa.gov.*

(2) For service information identified in this AD, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800–Winged–S); email *wcs_cust_service_eng.gr-sik@lmco.com.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Issued on September 11, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–20482 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0843; Product Identifier 2020–NM–073–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 airplanes. This proposed AD was prompted by a report of smoke and signs of an overheating condition from the emergency light battery (ELB) due to excessive corrosion surrounding the internal lead acid batteries, which caused an electrical short circuit that led to the smoke and overheating condition. This proposed AD would require an inspection to determine the last replacement date of the ELB, and replacement if necessary. This proposed AD would also require the incorporation of a new maintenance task into the aircraft maintenance schedule. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0843; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0843; Product Identifier 2020–NM–073–AD'' at the beginning of your comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2020–07, dated March 17, 2020 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0843.

This proposed AD was prompted by a report of smoke and signs of an overheating condition from the ELB due to excessive corrosion surrounding the internal lead acid batteries, which caused an electrical short circuit that led to the smoke and overheating condition. The FAA is proposing this AD to address such conditions, which could cause fire onboard the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 700–33–024, dated May 13, 2019. This service information describes procedures for an inspection to determine the last battery replacement date of the ELB, and replacement if necessary.

Bombardier also issued following service information.

- Supplemental Time Limits/Maintenance Checks (STLMC) Temporary Revision (TR) 05–19091701, dated September 17, 2019.
- STLMC TR 05–19091704, dated September 17, 2019.
- STLMC TR 05–19091705, dated September 17, 2019.

These documents describe amendments to the aircraft maintenance schedule for the ELB restoration and are distinct since they apply to different airplane serial numbers.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in Bombardier Service Bulletin 700–33–024, dated May 13, 2019, described previously.

This proposed AD would also require the incorporation of a new maintenance task into the aircraft maintenance schedule.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed

AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$11,308	$11,563	$797,847

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2020–0843; Product Identifier 2020–NM–073–AD.

(a) Comments Due Date

The FAA must receive comments by November 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 airplanes, certificated in any category, serial numbers 9002, 9003, 9011, 9016, 9020, 9022 through 9025 inclusive, 9029, 9031, 9032, 9036, 9039 through 9044 inclusive, 9046 through 9058 inclusive, 9060 through 9065 inclusive, 9067 through 9081 inclusive, 9083 through 9106 inclusive, 9108 through 9122 inclusive, 9124 through 9126 inclusive, 9128, 9129, 9133, 9134, 9136 through 9139 inclusive, 9141 through 9148 inclusive, 9150, 9151, 9153, 9159, 9162, 9163, 9165, and 9169.

(d) Subject

Air Transport Association (ATA) of America Code 33, Lights.

(e) Reason

This AD was prompted by a report of smoke and signs of an overheating condition from the emergency light battery (ELB) due to excessive corrosion surrounding the internal lead acid batteries, which caused an electrical short circuit that led to the smoke and overheating condition. The FAA is issuing this AD to address such conditions, which could cause fire onboard the airplane.

(f) Compliance

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

(g) Inspection and Corrective Action

Within 15 months after the effective date of this AD, inspect the ELB to determine the last replacement date or the manufacturing date, as applicable; if any date is 4 years or older, replace the ELB before further flight. Do the actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–33–024, dated May 13, 2019. For airplanes on which the restoration task specified in paragraph (h) of this AD was done before the effective date of this AD, the requirements of paragraph (g) of this AD are not required.

(h) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to include the information specified in Bombardier BD–700 Supplemental Time Limits/Maintenance Checks (STLMC) Chapter 5 task number 33–51–54–603, ''Restoration of the Emergency Lighting Batteries (XL245–B Emergency Battery System),'' in the Bombardier BD–700 STLMC, as specified in the applicable temporary revision identified in figure 1 to paragraph (h) of this AD. The initial compliance time for doing task 33–51–54–603 is at the applicable time specified in paragraph (h)(1) or (2) of this AD. Repeat task 33–51–54–603 thereafter at the interval specified within that task.

(1) If both ELBs were replaced at the time of compliance with paragraph (g) of this AD: Within 48 months after the ELB replacement.

(2) If neither ELB, or only one ELB, was replaced at the time of compliance with paragraph (g) of this AD: Within 48 months after the applicable compliance time

specified in paragraph (h)(2)(i) or (ii) of this AD.

(i) For each ELB, use the battery replacement date, if it is indicated.

(ii) For each ELB, use the date of manufacture, if it does not have a battery replacement date indicated.

Figure 1 to paragraph (h) – *Service Information*

Airplane Serial Number	Temporary Revision (TR)
9002, 9003, 9011, 9016, 9020, 9022 through 9025 inclusive, 9029, 9031, 9032, 9036, 9039 through 9044 inclusive, 9046 through 9058 inclusive, 9060 through 9065 inclusive, 9067 through 9081 inclusive, 9083 through 9106 inclusive, 9108 through 9122 inclusive, and 9124	Bombardier Global Express BD-700 STLMC TR 05-19091701, dated September 17, 2019
9125, 9126, 9128, 9129, 9133, 9134, 9136 through 9139 inclusive, 9141 through 9148 inclusive, 9150, 9151, and 9153	Bombardier Global Express BD-700 STLMC TR 05-19091704, dated September 17, 2019
9159, 9162, 9163, 9165, and 9169	Bombardier Global Express XRS BD-700 STLMC TR 05-19091705, dated September 17, 2019

(i) Misidentified Restoration Task

The following temporary revisions misidentified the required restoration task as task ''33–51–54–602.''

(1) Bombardier Global Express XRS BD–700 STLMC Temporary Revision 05–19032701, dated March 27, 2019.

(2) Bombardier Global Express BD–700 STLMC Temporary Revision 05–19040301, dated April 3, 2019.

(3) Bombardier Global Express BD–700 STLMC Temporary Revision 05–19040401, dated April 4, 2019.

(j) Compliance With Restoration Task for Airplanes on Which the Misidentified Task Was Accomplished

For airplanes on which the restoration task specified as task ''33–51–54–602'' in the applicable temporary revision identified in paragraph (i) of this AD was done before the effective date of this AD:

(1) The actions specified in paragraph (g) of this AD are not required.

(2) The initial accomplishment of the task specified in paragraphs (h)(1) and (2) of this AD is not required.

(3) Task 33–51–54–603 must be done within 48 months after task ''33–51–54–602'' was accomplished, and thereafter at the intervals specified in task 33–51–54–603.

(k) No Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections) and intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2020–07, dated March 17, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0843.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on September 10, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20373 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0845; Product Identifier 2020–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A320–271N, A321–211 and A321–271N airplanes. This proposed AD was prompted by reports of missing overhead stowage compartment (OHSC) X-fixation brackets or brackets that were incorrectly installed during assembly. This proposed AD would require a special detailed inspection of the OHSC X-fixation brackets for missing or incorrectly installed brackets, and installation or replacement if necessary; or modification of each OHSC; as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 2, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0845.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0845; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0845; Product Identifier 2020–NM–102–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0122, dated May 29, 2020 (''EASA AD 2020–0122'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–271N, A321–211 and A321–271N airplanes.

This proposed AD was prompted by reports of missing OHSC X-fixation brackets or brackets that were incorrectly installed during assembly. The FAA is proposing this AD to address this condition, which could lead to OHSC failure under certain loading conditions, and possibly result in injury to occupants and impede egress during an emergency evacuation. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0122 requires a special detailed inspection of the OHSC X-fixation brackets for missing or incorrectly installed brackets, and corrective actions (installation or replacement) if necessary; or modification of each OHSC by installing new X-fixation brackets and re-identifying the OHSC housing. This material is reasonably available because

the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0122 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0122 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0122 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0122 that is required for compliance with EASA AD 2020–0122 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0845 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 29 work-hours × $85 per hour = Up to $2,465	$0	Up to $2,465	Up to $76,415.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 36 work-hours × $85 per hour = Up to $3,060	Up to $539,060	Up to $542,120.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 29 work-hours × $85 per hour = Up to $2,465	* $	* $

* The FAA has received no definitive data that would enable us to provide parts cost estimates for the on-condition action specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2020–0845; Product Identifier 2020–NM–102–AD.

(a) Comments Due Date

The FAA must receive comments by November 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A320–271N, A321–211 and A321–271N airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0122, dated May 29, 2020 (''EASA AD 2020–0122'').

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports of missing overhead stowage compartment (OHSC) X-fixation brackets or brackets that were incorrectly installed during assembly. The FAA issuing this AD to address this condition, which could lead to OHSC failure under certain loading conditions, and possibly result in injury to occupants and impede egress during an emergency evacuation.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0122.

(h) Exceptions to EASA AD 2020–0122

(1) Where EASA AD 2020–0122 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0122 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0122 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0122 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2020–0122, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0845.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov*.

Issued on September 11, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20481 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 200810–0213]

RIN 0607–AA58

Foreign Trade Regulations (FTR): Request for Public Comments on the Overall Impact of the Removal of Electronic Export Information (EEI) Filing Requirements for Shipments Between the United States and Puerto Rico and the U.S. Virgin Islands

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of the Census (Census Bureau) is seeking public comments on its consideration to remove the Electronic Export Information (EEI) filing requirement for shipments between the United States and Puerto Rico and the U.S. Virgin Islands. For many years, the Census Bureau has received requests, from both the government of Puerto Rico and members of the international trade community, to eliminate the requirement to file EEI for shipments between the United States and Puerto Rico in the Automated Export System. One of the reasons for requesting removal of the filing requirement is that it seems to treat Puerto Rico like a foreign country, when in fact Puerto Rico is a U.S. territory and part of the

U.S. customs area. Arguments have also been made that the requirement imposes a burden on what should be treated as interstate commerce, discourages manufacturers in the 50 states to ship to Puerto Rico, and impedes economic development on the island. However, removal of the filing requirement could impact the quality and availability of key federal statistics. The Census Bureau is requesting information to assess potential impacts of a regulatory change in the filing requirements and to identify stakeholder priorities for data quality and availability.

DATES: Written comments must be received on or before November 16, 2020.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is identified by RIN number 0607–AA58; or
- By email directly to *gtmd.ftrnotices@census.gov.* Include RIN number 0607–AA58 in the subject line.

All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Lisa E. Donaldson, Division Chief, Economic Management Division, Census Bureau, 4600 Silver Hill Road, Room 6K064, Washington, DC 20233–6010, by phone (301) 763–7296, by fax (301) 763–8835, or by email *lisa.e.donaldson@census.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. For these statistics, the Census Bureau uses data from the Electronic Export Information (EEI) filings in the Automated Export System. Trade between the United States and its territories is considered domestic and therefore statistics on such trade are not tabulated as a part of the Census Bureau foreign trade statistics. Collecting and compiling trade statistics between the United States, Puerto Rico, and other territories is, however, part of the Census Bureau's monthly processing of EEI. Ultimately, these statistics are published in the FT–895 report, ''U.S. Trade with Puerto Rico and U.S. Possessions.'' This annual report presents total quantity and value of commodities shipped between the United States, Puerto Rico, and U.S. possessions, including the U.S. Virgin Islands.

Data on trade between the United States and its territories is used by other government agencies and private organizations. For example, the Bureau of Economic Analysis (BEA), within the U.S. Department of Commerce, uses the data to compile the U.S. Gross Domestic Product (GDP), one of the most anticipated economic indicators and the primary measure of the nation's economy. The BEA also uses the data in its initiative to estimate Puerto Rico GDP statistics, which are anticipated in 2020. Given the magnitude of Puerto Rico trade with states, estimates of Puerto Rico GDP would be significantly compromised without the trade data from the filings. The Puerto Rico Planning Board, tasked with overseeing and promoting development in Puerto Rico, uses the trade statistics to produce statistical reports for the Puerto Rican government and businesses to make sound policy and business decisions, respectively.

Although eliminating the mandatory requirement to file EEI for shipments between the United States and Puerto Rico would remove an additional step in the shipping process, there would be other implications associated with this change. For example, the loss of data involving petroleum trade between the United States and Puerto Rico is a concern for the Department of Energy. There is currently no other source of information or method for tracking trade flows of oil and other energy-related commodities between the United States and Puerto Rico. The U.S. statistical system does not measure state-to-state imports and exports, only trade between states and the rest of the world.

There is no alternative data source to collect this information because Puerto Rico is not included in many other Census Bureau economic surveys. The Census Bureau is exploring options to include Puerto Rico in existing surveys to mitigate the significant loss of information about the economy of Puerto Rico that would result from eliminating the filing requirement. However, using other existing surveys to collect data on the economy of Puerto Rico would not result in the same data set that is currently available.

Through this notice, the Census Bureau is seeking public comments to assess the overall impact that the removal of the filing requirement for shipments between the United States and Puerto Rico would have on the availability and quality of statistical data, as well as on trade. The Census Bureau also welcomes comments on the potential impact of a similar filing requirement removal for shipments between the United States and the U.S. Virgin Islands.

Request for Comments

The Census Bureau is seeking public comments in order to assess the possible impact on statistics, data users, and businesses of removal of the filing requirement, and to identify any other possible impacts. Considering the known positive and negative impacts of removing the filing requirement, below are questions to consider when providing feedback to this proposed rule. Any pertinent feedback not captured by these questions is also welcome.

1. What Census Bureau statistical data on shipments between the 50 states and Puerto Rico (*e.g.,* the FT–895 U.S. Trade with Puerto Rico and U.S. Possessions publications and digital datasets) are useful and how are they useful?

2. What information in the Census Bureau's statistical data on shipments between the 50 states and Puerto Rico is most relevant? What characteristics of data on trade for Puerto Rico are most relevant (*e.g.,* consistency and comparability, timeliness, monthly publication)?

3. The Congressional Task Force on Economic Growth in Puerto Rico requested an assessment of whether alternative datasets could be used, with or without modification, to achieve the same statistical objective of the current reporting requirement for Puerto Rico, while imposing a lesser burden on businesses. Are there additional or alternative datasets that you believe could be used for this assessment?

4. If the EEI reporting requirement were eliminated and replaced by an alternative data collection intended to reduce burden, which information should be considered essential for inclusion in that alternative collection?

5. Shipments from the 50 states to the U.S. Virgin Islands have a similar filing requirement that enables the Census Bureau to produce trade statistics for shipments from the 50 states to the U.S. Virgin Islands (also included in the FT–895). Do you have any feedback on these statistical products, the information provided in them, and possible alternative datasets that would achieve

the same statistical objective as the current reporting requirement, if the reporting requirement for the U.S. Virgin Islands also was eliminated?

Steven D. Dillingham, Director, Bureau of the Census, approved the publication of this Notice in the **Federal Register**.

Dated: September 4, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–19986 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–07–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10821, 34–89633, 39–2532, IC–33974, S7–11–20]

RIN 3235–AM77

Administration of the Electronic Data Gathering, Analysis, and Retrieval System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are publishing for comment a proposed new rule under Regulation S–T. The proposal would specify several actions that the Commission, in its administration of the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''), may take to promote the reliability and integrity of EDGAR submissions. In addition, the proposed rule would set forth a process for the Commission to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable.

DATES: Comments should be received on or before October 19, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–11–20 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number S7–11–20. This file number should be included on the subject line if email is used. To help us process and review comments more efficiently, please use only one method of submission. We will post all comments on our website (*http://www.sec.gov/rules/other.shtml*). Comments also are 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. Eastern Time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. Please submit only information that you wish to make available publicly.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Rosemary Filou, Chief Counsel; Monica Lilly, Senior Special Counsel; or Jane Patterson, Senior Counsel; EDGAR Business Office at 202–551–3900, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to add 17 CFR 232.15 (new ''Rule 15'') to Regulation S–T, General Rules and Regulations for Electronic Filings.[1]

I. Introduction

In 1993, the Commission adopted rules mandating that certain filings be made with the Commission electronically through the newly launched EDGAR system.[2] Since then, the Commission has further prescribed requirements and procedures for EDGAR submissions.

Regulation S–T addresses, among other things, certain administrative issues related to EDGAR submissions. For example, Rule 13 of Regulation S–T allows a filer to request that the Commission adjust a filing date when the filing is delayed due to technical difficulties beyond the filer's control.[3] In addition, pursuant to Rule 106, the Commission may remove from EDGAR an entire accepted submission or document if it contains executable code.[4] Regulation S–T further allows a filer to submit an amendment or a notice of withdrawal of the filer's submission to remedy a submission issue (''filer corrective disclosure'').[5]

In recent years, as the volume of EDGAR submissions has grown, the Commission has increasingly confronted administrative issues that impact the Commission's ability to promote the reliability and integrity of EDGAR submissions and that are not easily addressed by existing rules or filer corrective disclosure. When these issues arise, they can create confusion for filers, investors, and other users of EDGAR. To promote the reliability and integrity of EDGAR submissions and to provide transparency about our practices, we are proposing to specify actions that the Commission may take to facilitate the resolution of such issues. The proposed rule would confirm and clarify the Commission's existing approach to addressing the administrative issues that arise in connection with EDGAR submissions.

Specifically, proposed Rule 15 would provide that in its administration of EDGAR, the Commission may take the following actions to promote the reliability and integrity of EDGAR submissions:[6]

[1] 17 CFR 232.10 *et seq.*

[2] *See, e.g.,* Release No. 33–6977 (Mar. 18, 1993) [58 FR 14628] (establishing rules and procedures applicable to electronic submissions processed by the Divisions of Corporation Finance and Investment Management); Release No. IC–19284 (Mar. 18, 1993) [58 FR 14848] (adopting electronic submission filing rules applicable to investment companies and institutional investment managers under the Investment Company Act of 1940 (''Investment Company Act'') and the Securities Exchange Act of 1934 (''Exchange Act'')); and Release No. 33–6986 (Apr. 9, 1993) [58 FR 18638] (adoption of the EDGAR Filer Manual).

[3] *See* 17 CFR 232.13(b).

[4] *See* 17 CFR 232.106. Rule 106 of Regulation S–T prohibits submissions to EDGAR that contain executable code, and indicates that attempted submissions identified as containing executable code will be suspended unless the code is in a PDF document that may be deleted.

[5] Regulation S–T anticipates that filers may address their own substantive, and in some cases, administrative, submission issues through filer corrective disclosure. *See, e.g.,* 17 CFR 232.103 (providing that filers are not subject to the liability and anti-fraud provisions of the federal securities laws with respect to errors or omissions resulting solely from electronic transmission errors beyond the control of the filer if such filer files an amendment as soon as reasonably practicable after becoming aware of the error or omission); 17 CFR 232.105, Instruction 2 to paragraph (d) (providing that filers must correct an inaccurate or nonfunctioning link or hyperlink to an exhibit in certain circumstances by filing an amendment to the registration statement containing the inaccurate or nonfunctioning link or hyperlink); 17 CFR 232.501(a)(3) and 17 CFR 232.501(b)(3) (providing that filers may correct or amend a modular submission or a segmented filing only by resubmitting the entire modular submission or segmented filing).

[6] The Commission may delegate certain functions of proposed Rule 15 to the Commission staff.

• Redact, remove, or prevent dissemination of sensitive personally identifiable information that if released may result in financial or personal harm;

• prevent submissions that pose a cybersecurity threat;

• correct system or Commission staff errors;

• remove or prevent dissemination of submissions made under an incorrect EDGAR identifier;

• prevent the ability to make submissions when there are disputes over the authority to use EDGAR access codes;

• prevent acceptance or dissemination of an attempted submission that it has reason to believe may be misleading or manipulative while evaluating the circumstances surrounding the submission; and allow acceptance or dissemination if its concerns are satisfactorily addressed;

• prevent an unauthorized submission or otherwise remove related access; and

• remedy similar administrative issues relating to submissions.

In addition, the proposed rule would set forth a process for the Commission to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable.

The proposed rule would not change filers' obligations under the federal securities laws to ensure the accuracy and completeness of information in their EDGAR submissions. Moreover, in the vast majority of administrative and substantive EDGAR submission issues, filers would continue to address an error by submitting a filer corrective disclosure.[7] We intend to continue to rely upon filer corrective disclosure to remedy most submission errors.

II. Discussion of the Proposed Rule

Proposed Rule 15 would specify that in its administration of EDGAR, the Commission may take actions to promote the reliability and integrity of EDGAR submissions. The following is a discussion of the types of actions the Commission may take pursuant to the proposed rule to achieve those objectives.

A. Sensitive Personally Identifiable Information

Proposed Rule 15(a)(1) would specify that the Commission may (i) redact submissions containing personally identifiable information that if released may result in financial or personal harm to an individual (''Sensitive PII''); (ii) remove submissions containing Sensitive PII; and/or (iii) prevent dissemination of submissions containing this information.[8] When such steps are taken, the Commission may communicate as necessary with the filer to facilitate submission of a version in which such information is redacted.

The Commission has sought to reduce the risk that Sensitive PII included in EDGAR submissions may result in financial or personal harm to individuals. For example, in April 2018, the Commission adopted amendments to certain SEC forms to eliminate any reference to or request for Sensitive PII.[9] The amendments eliminated form fields requesting Social Security numbers and other Sensitive PII that the Commission indicated could create ''costs [for filers] related to ongoing identity protection and monitoring, as well as reputational costs, operational costs, and losses from theft in the event misappropriated PII is used by bad actors.'' [10] Similarly, the proposed rule would clarify that the Commission may take further steps to ensure that Sensitive PII does not reside in EDGAR and communicate as necessary with filers to facilitate submissions in which Sensitive PII is redacted.[11] Whether the Commission removes, redacts, or prevents dissemination of the Sensitive PII in the submission would be based on when the Commission first becomes aware of the Sensitive PII.

B. Cybersecurity Threats

Proposed Rule 15(a)(2) would specify that the Commission may prevent the submission to EDGAR of any submission that poses a cybersecurity threat, including but not limited to, those containing any malware or virus, and communicate as necessary with the filer regarding the submission. Commission action to address cybersecurity threats in EDGAR submissions should benefit all EDGAR users and promote the reliability and integrity of EDGAR submissions.

C. System and Commission Staff Errors

Proposed Rule 15(a)(3) would specify that if the Commission determines that a submission has not been processed by EDGAR, or has been processed incorrectly by EDGAR or contains an error attributable to the Commission staff, the Commission may correct and/or prevent dissemination of the submission and communicate as necessary with the filer to facilitate filer corrective disclosure. In each of these circumstances, under the Commission's existing practice, the Commission first attempts to correct the error without unduly burdening filers. Most frequently, for submissions not processed by EDGAR, for example, due to a system outage, the Commission may assign the filing date that would have been received had the EDGAR outage not occurred, without first communicating directly with the filer. For other isolated system or staff errors, such as when the Commission determines a filing was not processed correctly, the Commission may also resolve the error without contacting the filer. When necessary, the Commission may work proactively with filers to accomplish filer corrective disclosure.[12]

D. Incorrect EDGAR Identifiers

Proposed Rule 15(a)(4) would specify that the Commission may remove and/or prevent public dissemination of a submission made under an incorrect EDGAR unique identifying number,[13] and communicate as necessary with the filer and others to facilitate a filer corrective disclosure. From time to time, filings are incorrectly submitted and not associated with the correct unique identifying number, which can create confusion for filers, investors and other EDGAR users. When such errors cannot be resolved by filer corrective disclosure, the Commission may need to remove the erroneous submission.

[7] *See, e.g.,* 17 CFR 232.103, 232.105 and 232.501(a)(3).

[8] Sensitive PII may comprise a single item of information (for example, a Social Security Number) or a combination of two or more items (for example, a full name and financial, medical, criminal, or employment history). *See* proposed Rule 15(a)(1).

[9] *See* Amendments to Forms and Schedules to Remove Provision of Certain Personally Identifiable Information, Release No. 33–10846 (Apr. 25, 2018) [83 FR 22190] (''PII Form Amendments Release'') available at *https://www.sec.gov/rules/final/2018/33-10486.pdf.*

[10] *Id.* at 4–5.

[11] Although the Commission may take steps to ensure that Sensitive PII does not reside in EDGAR, the burden of the responsibility to redact such information from submissions continues to lie with the filer and not the Commission.

[12] Rule 103 of Regulation S–T addresses concerns that filers may have about liability when issues arise that are not the fault of the filer. *See* 17 CFR 232.103. Moreover, Rule 13(b) of Regulation S–T makes clear that if a filer in good faith attempts to timely file but the filing is delayed due to technical difficulties beyond the filer's control, the filer may request an adjustment of the filing date of the document.

[13] EDGAR provides each entity a unique identifying number, and submissions made by an entity are associated with that number. If an individual who has access to more than one unique identifying number (for example, a filing agent) were to make a submission for one entity using another entity's number, it erroneously would appear to EDGAR users that the submission is a filing by the unique identifying number holder. *See* 17 CFR 232.10(b).

E. EDGAR Access Code Disputes

Proposed Rule 15(a)(5) would specify that the Commission may prevent a filer's ability to make submissions if the Commission determines that a dispute exists as to which persons have the authority to make submissions on behalf of the filer, until the dispute is resolved by the disputing parties or by a court of competent jurisdiction. These disputes may arise, for example, when two or more parties each claim control of a filing entity and each demand access to the entity's EDGAR account. Resolution of such disputes often turns on matters of state corporation law or other factors outside the scope of the federal securities laws. Accordingly, in these situations, the Commission staff has asked the disputing parties to either resolve the dispute themselves or have the matter adjudicated under the relevant state corporation law.[14] The proposed rule would affirm the Commission's ability to take action to ensure that only persons authorized to make submissions on behalf of the filer may do so.

F. Potential Manipulation

If the Commission has reason to believe that a submission or an attempted submission may be misleading or manipulative, proposed Rule 15(a)(6) would specify that the Commission may prevent acceptance or dissemination of the submission while evaluating the circumstances surrounding the submission. For example, the filer's title or role described in the submission may not be for the correct entity or may be otherwise inaccurate. Additionally, the filer may include statements in the submission that do not relate to the form or provide responsive information. The proposed rule also specifies that the Commission may allow acceptance or dissemination if its concerns are satisfactorily addressed. In such circumstances, the filer would receive the filing date it would have received had the delay by the Commission not occurred, assuming the submission does not implicate other provisions of Rule 15.

G. Unauthorized Submissions

Proposed Rule 15(a)(7) would specify that the Commission may prevent the use of EDGAR access codes if it has reason to believe that there has been an unauthorized submission or an attempt to make an unauthorized submission on EDGAR. Currently, when questions arise as to whether a particular submission or attempted submission was authorized, the Commission staff seeks to better understand the circumstances surrounding the submission and evaluate what steps, if any, to take in response. The proposed rule would specify that in such situations the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR. If its concerns are satisfactorily addressed, the Commission would lift the suspension of EDGAR access codes and allow the submission to proceed, assuming the submission does not implicate other provisions of Rule 15.

H. Additional Remedial Steps

Because the Commission cannot anticipate every submission issue that may arise in the future, proposed Rule 15(a)(8) would specify that in certain circumstances the Commission may take further appropriate steps to address a matter and communicate as necessary with the filer regarding the submission. Specifically, under the proposed rule, the Commission may take such further steps if the Commission has reason to believe that, to promote the reliability and integrity of EDGAR submissions, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) of Rule 15.

I. Notice

Finally, the proposed rule provides that the Commission may act without advance notice to filers or any other person. Typically, the Commission communicates and works with filers to address submission issues, but there are times when the Commission needs the flexibility to respond promptly to submission issues in order to avoid harm to investors and other EDGAR users who depend upon the accuracy of the information disseminated by EDGAR. In other circumstances, immediate action may be necessary to avoid potential threats to EDGAR, to prevent the dissemination of unauthorized or potentially false or misleading submissions, or to prevent the improper use of filers' EDGAR accounts.

At the same time, we are mindful that administrative actions under the proposed rule should not unduly hinder or delay the EDGAR submission process. Accordingly, proposed Rule 15(b) would specify a method for the Commission to provide notice of its actions under the proposed rule to a filer and any person the Commission determines is relevant to the matter (''relevant person'') as soon as practicable after those actions are taken. Specifically, the proposed rule provides that, as soon as reasonably practicable after taking action pursuant to Rule 15 without providing advance notice, the Commission would provide written notice and a brief factual statement of the basis for the action to the filer and relevant persons. The Commission would send the notice and factual statement by electronic mail to the email address on record in the filer's EDGAR account, and the email address of any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical address of any relevant persons. We are proposing to notify other relevant persons of the action because code disputes, submissions made in another entity's account, and similar scenarios may involve parties other than the filer itself. Informing such parties of our actions would provide them an opportunity to bring relevant information in their possession to the Commission's attention and help facilitate prompt resolution of submission issues.

III. Request for Public Comment

We request and encourage any interested person to submit comments on any aspect of the proposed amendments, other matters that might have an impact on the proposed amendments, and suggestions for additional changes. In particular, we request comment on the proposed method for the Commission to provide notice to a filer or relevant person of the Commission's actions under the proposed rule and whether there are alternative or additional steps the Commission could take to facilitate the prompt resolution of administrative issues related to EDGAR submissions. Comments are of particular assistance if accompanied by analysis of the issues addressed in those comments and any data that may support the analysis. We urge commenters to be as specific as possible.

IV. Economic Analysis

We have carefully considered the economic effects of proposed Rule 15.[15]

[14] When a dispute arises between parties, each of whom claims to be the legitimate corporate representative—which may occur after a leadership change at a filing entity—the Commission staff typically prevents future submissions until the parties can reach an agreement, or a party is able to provide a court order designating the appropriate corporate representative.

[15] Section 2(b) of the Securities Act of 1933 (''Securities Act''), Section 3(f) of the Exchange Act, and Section 2(c) of the Investment Company Act

The proposed rule seeks to increase transparency for filers, investors, and other users of EDGAR by specifying the actions the Commission may take to resolve certain administrative issues. Increased transparency about Commission actions would create benefits for both filers and users, because filers and users would know the types of actions they can expect the Commission to take to promote the reliability and integrity of EDGAR submissions. However, we anticipate these benefits would be limited as the proposed rule largely reflects existing Commission practice. Similarly, we do not expect filers to incur additional costs since the proposed rule reflects corrective action the Commission, as the administrator of EDGAR, currently takes to promote the reliability and integrity of EDGAR submissions. Further, we anticipate the proposed rule would marginally improve efficiency, but would not have a significant effect on competition or capital formation. Because we generally cannot predict the need for or extent of corrective actions the proposed rule would address, we cannot quantify the anticipated economic effects of future corrective actions. Therefore, the analysis that follows provides primarily a qualitative assessment of the likely economic effects.

A. Economic Baseline

The Commission's current processes and procedures for resolving the enumerated administrative issues listed in the proposed rule and discussed above serve as the baseline against which we assess the proposed rule. This section discusses, as it relates to this rulemaking, filers' current usage of EDGAR and the Commission's processes for administering EDGAR.

Because of the variety of administrative issues that may arise in connection with EDGAR submissions, the Commission has developed procedures for identifying and addressing the issues described above, although the Commission has not published those procedures. Where possible, the Commission currently communicates with relevant filers to facilitate filer corrective disclosure to address problematic submissions. While filer corrective disclosure addresses the majority of known EDGAR submission issues, there are circumstances in which working with a filer does not address problematic submissions, such as when the filer is uncooperative or the Commission cannot validate a filer's authorization to make submissions. Additionally, in limited cases, the Commission has responded promptly to submission issues without first consulting relevant filers in order to avoid harm to investors and other EDGAR users who depend upon the accuracy of the information disseminated by EDGAR. For these submissions, the Commission acts expediently to minimize the time the public and the Commission are exposed to such harm. While the Commission typically notifies these filers of its actions afterwards, some filers may not know specifically why the Commission took action or the nature of the issue with the submission.

B. Costs and Benefits

The proposed rule specifies the actions the Commission may take with respect to specific administrative issues that impact the Commission's ability to promote the reliability and integrity of EDGAR submissions. We believe the proposed rule would provide increased transparency about the Commission's administrative processes, which in turn would benefit filers and improve the Commission's efficiency in administering EDGAR. We believe, however, that the proposed rule would have limited economic effects because the proposed rule largely reflects existing Commission practice.

More transparency into how the Commission administers EDGAR may benefit filers in two ways. First, by specifying the types of issues for which the Commission would take action, the proposed rule could encourage filers to take additional actions to prevent these issues if they believe the benefits exceed the costs of preventative actions. Second, when the Commission must act to address a problematic submission prior to notifying a filer or when an issue cannot be addressed solely by a filer corrective disclosure, the proposed rule's formal notification requirement would ensure that filers receive timely notification of Commission action. To the extent that this requirement results in the Commission notifying filers of issues that they can correct, such as incorrect EDGAR identifiers, EDGAR access code disputes, or potentially misleading filings, filers may be able to benefit from rectifying issues sooner than they would have prior to the rule.[16]

Because the proposed rule would inform filers of possible action the Commission may take to promote the reliability and integrity of EDGAR submissions, the proposed rule would improve the efficiency of administering EDGAR. This benefit is likely to be limited because the proposed rule primarily codifies existing procedures and the Commission would continue to resolve most issues by contacting filers to facilitate filer corrective disclosure. Since filers may submit fewer filings with errors and the Commission and filers would be able to more quickly correct errors, the proposed rule could lead to more timely and accurate information in EDGAR, benefiting investors, research analysts, data aggregators, and other financial professionals.[17] Moreover, since the

require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[16] In addition to filers, the Commission may work with EDGAR filing agents, counsel, and other entities to correct administrative issues. As with filers, these entities may incur lower costs if they can rectify issues with EDGAR submissions sooner.

[17] *See generally* Michael S. Drake, Darren T. Roulstone, and Jacob R. Thornock, *The Determinants and Consequences of Information Acquisition via EDGAR,* 32 Contemporary Accounting Research 3 (2016) (Most EDGAR users access the database a few times per quarter around corporate events such as restatements, earnings announcements, and acquisition announcements. This activity is related to, but distinct from, financial press articles. A small subset of users access EDGAR daily for multiple filings.); Jonathan L. Rogers, Douglas J. Skinner, and Sarah L.C. Zechman, *Run EDGAR Run: SEC Dissemination in a High-Frequency World,* Chicago Booth Research Paper No. 14–36 (Feb. 17, 2017) (finding that for a sample of Form 4 filings, there was an economically significant advantage to accessing data because of then-existing lags between the Commission's EDGAR website and the public dissemination feed); Brian Gibbons, Peter Iliev, and Jonathan Kalodimos, *Analyst Information Acquisition via EDGAR,* Working Paper (Nov. 15, 2019) (finding that information acquisition from EDGAR is associated with smaller analyst forecast errors); Peter Iliev, Jonathan Kalodimos, and Michelle Lowry, *Investors' Attention to Corporate Governance,* 9th Miami Behavioral Finance Conference 2018 (Jul. 16, 2020) (using EDGAR log files, finding that investors conduct significant research into corporate governance, particularly for large firms, firms with low managerial entrenchment, and those with meetings outside of the proxy season); Huaizhi Chen, Lauren Cohen, Umit Gurun, Dong Lou, and Christopher J. Malloy, *IQ from IP: Simplifying Search in Portfolio Choice,* NBER Working Paper No. 24801 (Apr. 20, 2019) (using EDGAR log data, shows institutional investors tracked management teams and insider-trading filings of firms); and Zhongling Qin, *Measuring Attention: The Case of Amendments to 10K Annual Reports,* Working Paper (Nov. 15, 2019) (showing consistently higher trading volume once there are enough attentive readers of 10–K/A filings, as defined by whether the readers read the original 10–K filings, though consistent with gradual diffusion of information). *But see* Stefano DellaVigna and Joshua M. Pollet, *Investor Inattention and Friday Earnings Announcements,* 64 J. of Fin. 2 (Mar. 13, 2009) (finding less immediate response for Friday

Continued

Commission, as the administrator of EDGAR, already takes corrective actions to promote the reliability and integrity of EDGAR submissions, we do not expect filers to incur additional costs in connection with these improvements. The Commission generally cannot predict the need for or the extent of corrective actions, so we cannot quantify the informational efficiency benefits from future corrective actions.

To the extent that the proposed rule reduces the number of cybersecurity threats or reduces the administrative frictions in preventing cybersecurity threats, there may be benefits to the users of EDGAR.[18] In particular, users, including investors, analysts, asset managers, and data collection companies, may incur fewer costs associated with cleaning or repairing systems and recovering data.[19] Furthermore, individuals, investors, companies, and asset managers, among others, may benefit from the Commission and filers preventing cybersecurity attacks that disrupt the dissemination of filings through EDGAR or obtain confidential or protected financial information on the Commission's or users' systems.

Lastly, because EDGAR submissions generally do not require sensitive PII,[20] and current Commission practices seek to identify and redact sensitive PII, we do not anticipate that the proposed rule specifying that the Commission may redact, remove and/or not disseminate EDGAR submissions containing PII will have a substantial economic effect.

We request comment on all aspects of our economic analysis, including the potential costs and benefits of proposed Rule 15. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views.

V. Administrative Law Matters

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act (''APA''), that the proposed amendments relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act of 1980[21] therefore does not apply. Nevertheless, we have determined that it would be useful to publish the proposed amendments for notice and comment before adoption. Because these amendments relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' they are not subject to Small Business Regulatory Enforcement Fairness Act of 1996.[22] These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.[23]

VI. Statutory Basis and Text of Proposed Rule Amendments

We are proposing the new rules contained in this document under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act,[24] Sections 3, 4A, 4B, 12, 13, 14, 15, 15B, 23, and 35A of the Exchange Act,[25] Section 319 of the Trust Indenture Act of 1939,[26] and Sections 8, 30, 31, and 38 of the Investment Company Act.[27]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

For the reasons discussed above, we propose to amend 17 CFR part 232 as follows:

PART 232 REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Add § 232.15 to read as follows:

§ 232.15 Administration of EDGAR.

(a) In its administration of EDGAR, the Commission may take the following actions to promote the reliability and integrity of submissions made through EDGAR.

(1) If the Commission determines that a submission contains personally identifiable information that if released may result in financial or personal harm to an individual, which may comprise a single item of information or a combination of two or more items, the Commission may redact such information from the submission, prevent dissemination of the submission, and/or remove the submission from the Commission's public website, and may communicate as necessary with the filer to facilitate submission of a version in which such information is redacted;

(2) The Commission may prevent the submission to EDGAR of any submission that poses a cybersecurity threat, including but not limited to, submissions containing any malware or virus, and may communicate as necessary with the filer regarding the submission;

(3) If the Commission determines that a submission has not been processed by EDGAR, or has been processed incorrectly by EDGAR, or contains an error attributable to the Commission staff, the Commission may correct and/or prevent public dissemination of the submission and may communicate with the filer as necessary to facilitate the filer's submission of an amendment to, or a notice of withdrawal of, the filer's submission (a ''filer corrective disclosure'');

(4) If the Commission determines that a submission is made under an incorrect EDGAR unique identifying number, the Commission may remove and/or prevent public dissemination of the submission and may communicate with the filer as necessary to facilitate a filer corrective disclosure;

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announcements than for announcements on other days, consistent with investor inattention); and Tim Loughran and Bill McDonald, *The Use of EDGAR Filings by Investors,* J. of Behavioral Fin. Forthcoming (Dec. 4, 2016) (showing that the average publicly-traded firm has its annual report accessed only 28.4 times on the day of and day after the filing, though other filings such as initial public offering filings are more quickly consumed).

[18] Under current practice, the Commission immediately prevents submissions to EDGAR of any submission that poses cybersecurity risks once the Commission identifies them. Furthermore, the Commission has already promulgated a rule addressing the removal of submissions or parts of submissions that contain executable code. 17 CFR 232.106.

[19] *See* The Council of Econ. Advisers, The Cost of Malicious Cyber Activity to the U.S. Economy (Feb. 2018). Available at: *https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf* (estimating that in 2016, malicious cyber activity cost the U.S. economy between $57 and $106 billion through denial of service attacks, disruption of business activity, or destruction or theft of proprietary and strategic information).

[20] In 2018, the Commission amended forms and schedules to eliminate requirements to provide certain personally identifiable information. *See* PII Form Amendments Release, *supra* note 9. Also, in the EDGAR Filer Manual, the Commission advises against including social security numbers in filings submitted to the Commission. *See https://www.sec.gov/info/edgar/edgarfm-vol2-v47.pdf.* Some forms may require Sensitive PII in certain circumstances. For example, Form 20–F requires dates of birth of a company's directors and senior management if required to be reported in the home country or otherwise publicly disclosed by the company. Additionally, Forms MA and Funding Portal require IRS Tax numbers if CRD numbers are unavailable. IRS Tax numbers also are required on Form SBSE if CRD numbers, IARD numbers, and foreign business numbers are unavailable.

[21] 5 U.S.C. 601 *et seq.*

[22] 5 U.S.C. 801 *et seq.*

[23] 44 U.S.C. 3501 *et seq.*

[24] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s (a).

[25] 15 U.S.C. 78c, 78d–1, 78d–2, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78w, and 78*ll.*

[26] 15 U.S.C. 77sss.

[27] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

(5) If the Commission determines that a dispute exists regarding the authority to make submissions on behalf of a filer, the Commission may prevent a filer's ability to make submissions until the dispute is resolved by the disputing parties or by a court of competent jurisdiction;

(6) If the Commission has reason to believe that an attempted submission may be misleading or manipulative, the Commission may prevent acceptance or dissemination of the submission while evaluating the circumstances surrounding the submission. The Commission may allow acceptance or dissemination if its concerns are satisfactorily addressed;

(7) If the Commission has reason to believe that a filer has made an unauthorized submission or attempted to make an unauthorized submission, the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR; and

(8) If the Commission otherwise has reason to believe that, to promote the reliability and integrity of submissions made through EDGAR, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) above, the Commission may take such further steps as are appropriate to address the matter and communicate as necessary with the filer regarding the submission.

(b) The Commission may act under paragraph (a) without providing advance notice to the filer or any other person. As soon as reasonably practicable after taking action under paragraph (a), the Commission will provide written notice and a brief factual statement of the basis for the action to the filer and any other person the Commission determines is relevant to the matter (''relevant persons''). The Commission will send the notice and factual statement by electronic mail to the email address on record in the filer's EDGAR account, and to the email address of any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical address of any relevant persons.

(c) Nothing in this rule prevents a filer from addressing an error or mistake in the filer's submission by making a filer corrective disclosure.

By the Commission.

Dated: August 21, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–18825 Filed 9–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

[Docket No. FinCEN–2020–0011]

RIN 1506–AB44

Anti-Money Laundering Program Effectiveness

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This document seeks public comment on potential regulatory amendments to establish that all covered financial institutions subject to an anti-money laundering program requirement must maintain an ''effective and reasonably designed'' anti-money laundering program. Any such amendments would be expected to further clarify that such a program assesses and manages risk as informed by a financial institution's risk assessment, including consideration of anti-money laundering priorities to be issued by FinCEN consistent with the proposed amendments; provides for compliance with Bank Secrecy Act requirements; and provides for the reporting of information with a high degree of usefulness to government authorities. The regulatory amendments under consideration are intended to modernize the regulatory regime to address the evolving threats of illicit finance, and provide financial institutions with greater flexibility in the allocation of resources, resulting in the enhanced effectiveness and efficiency of anti-money laundering programs.

DATES: Written comments are welcome, and must be received on or before November 16, 2020.

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506–AB44, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB44 in the submission. Refer to Docket Number FINCEN–2020–0011.
- *Mail:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include 1506–AB44 in the body of the text. Refer to Docket Number FINCEN–2020–0011.

Please submit comments by one method only. All comments submitted in response to this ANPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Scope of ANPRM

The scope of program rules under consideration for amendment in this ANPRM includes those applicable to all of the industries that have anti-money laundering (AML) program requirements under FinCEN's regulations, including banks (which includes credit unions and other depository institutions, as defined in 31 CFR 1010.100(d)); casinos and card clubs; money services businesses; brokers or dealers in securities; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises.[1] FinCEN particularly requests comment regarding any industry-specific considerations that FinCEN should evaluate with regard to the scope of possible rulemaking described in this ANPRM.

II. Background

A. History of the Bank Secrecy Act (BSA)

The Currency and Foreign Transactions Reporting Act of 1970, generally referred to as the BSA,[2] authorizes the Secretary of the U.S. Department of the Treasury (Secretary) to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence

[1] *See* 31 CFR 1020.210 (banks); 31 CFR 1021.210 (casinos and card clubs); 31 CFR 1022.210 (money services businesses); 31 CFR 1023.210 (brokers or dealers in securities); 31 CFR 1024.210 (mutual funds); 31 CFR 1025.210 (insurance companies); 31 CFR 1026.210 (futures commission merchants and introducing brokers in commodities); 31 CFR 1027.210 (dealers in precious metals, precious stones, or jewels); 31 CFR 1028.210 (operators of credit card systems); 31 CFR 1029.210 (loan or finance companies); and 31 CFR 1030.210 (housing government sponsored enterprises).

[2] 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332.

activities, including analysis to protect against international terrorism.'' [3] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and its related authorities.[4] As a result, FinCEN may require financial institutions to maintain procedures to ensure compliance with the BSA and its related regulations and to guard against money laundering, including AML program requirements.[5]

The Money Laundering Control Act of 1986 (MLCA) [6] made money laundering a Federal crime. It also amended the BSA, underscoring the importance of reporting information with a high degree of usefulness to government authorities. For example, Section 1359 of the MLCA amended section 8 of the Federal Deposit Insurance Act [7] and section 206 of the Federal Credit Union Act,[8] among other similar statutes, to require the Federal Banking Agencies [9] to issue regulations for covered financial institutions to ''establish and maintain procedures reasonably designed to assure and monitor the compliance'' of such institutions with the reporting and some recordkeeping requirements of the BSA.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Annunzio-Wylie) amended the BSA [10] by strengthening the sanctions for BSA violations and Treasury's role.[11] Annunzio-Wylie authorized Treasury to issue regulations requiring all financial institutions, as defined in BSA regulations, to maintain ''minimum standards'' of an AML program.[12] The minimum standards set forth in the statute were substantially similar to the standards set forth by the Federal Banking Agencies in their BSA compliance program regulations, which required depository institutions under their supervision to establish and maintain procedures ''reasonably designed'' to assure and monitor compliance with the requirements of the BSA.[13]

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) further amended the BSA, reinforcing the framework established earlier by Annunzio-Wylie, to require, among other things, customer identification requirements and Treasury's further expansion of AML program rules to cover certain other industries.[14] In 2003, FinCEN and the Federal Banking Agencies issued a joint final rule on customer identification program (CIP) requirements.[15] The USA PATRIOT Act also ushered in an expanded role for AML and other financial and economic measures in countering threats to U.S. national security and protecting the U.S. financial system. The range of authorities and measures introduced in Title III were intended to, among other purposes, ''increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism.'' [16]

FinCEN's most recent significant change to BSA regulations was the implementation of customer due diligence and beneficial ownership requirements in 2016. These rules resulted in: (i) The expansion of FinCEN's AML program rules for financial institutions regulated by a Federal functional regulator to expressly incorporate the minimum statutory elements of an AML program prescribed by 31 U.S.C. 5318(h)(1); and (ii) the incorporation of minimum standards for customer due diligence and the collection of beneficial ownership information for depository institutions, broker-dealers, mutual funds, and futures commission merchants and introducing brokers in commodities.[17]

B. Recent Efforts To Modernize the National AML Regime

Over the past several years, there have been significant innovations in the financial sector and the development of new business models, products, and services, fueled in part by rapid technological change. As a result, financial institutions have confronted new opportunities and challenges in meeting BSA compliance obligations and providing information with a high degree of usefulness to government authorities in an efficient manner. FinCEN seeks to ensure that the BSA's AML regime adapts to address the evolving threats of illicit finance, such as money laundering, terrorist financing, and related crimes—some of which have changed considerably in scope, nature, and impact since the initial passage of the BSA—while simultaneously providing financial institutions with additional flexibility in addressing these threats. FinCEN, in collaboration with supervisory partners, law enforcement, and, where appropriate, the financial industry, has undertaken recent initiatives that collectively re-examine the BSA regulatory framework and the broader national AML regime. The overall goal of these initiatives is to upgrade and modernize the national AML regime, where appropriate, and to facilitate the ability of the financial industry and corresponding supervisory authorities to leverage new technologies and risk-management techniques, share information, discard inefficient and unnecessary practices, and focus resources on fulfilling the BSA's stated purpose of providing information with a high degree of usefulness to government authorities. This ANPRM is intended to further these efforts.

1. The Bank Secrecy Act Advisory Group's AML Effectiveness Working Group and Recommendations

Annunzio-Wylie required the Secretary to establish a Bank Secrecy Act Advisory Group (BSAAG).[18] The statutory purposes of the BSAAG are to keep private sector representatives informed on a regular basis of the ways in which BSA reports filed by financial institutions, including suspicious

[3] 31 U.S.C. 5311.

[4] Treasury Order 180–01 (Jan. 14, 2020).

[5] 31 U.S.C. 5318(a)(2), (h)(2).

[6] Public Law 99–570, 100 Stat. 3207 (Oct. 27, 1986).

[7] 12 U.S.C. 1818.

[8] 12 U.S.C. 1786.

[9] The Federal Banking Agencies include the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration, and the Office of the Comptroller of the Currency.

[10] Title XV of Public Law 102–550, 106 Stat. 3672 (Oct. 28, 1992).

[11] *See* Title XV, sec. 1503 (authorizing the termination of FDIC insurance of insured depository institutions convicted of a criminal violation of the BSA), sec. 1504 (authorizing the removal officers or directors of such institutions found to have violated a BSA requirement), and sec. 1517 (authorizing Treasury to require the reporting of suspicious transactions) of Public Law 102–550.

[12] Title XV, sec. 1517 of Public Law 102–550.

[13] The minimum standards for an AML program set forth in Annunzio-Wylie, and codified at 31 U.S.C. 5318(h), include: ''(A) the development of internal policies, procedures, and controls, (B) the designation of a compliance officer, (C) an ongoing employee training program, and (D) an independent audit function to test programs.''

[14] Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001). FinCEN issued interim final AML program rules for financial institutions regulated by a Federal functional regulator, money services businesses, mutual funds, and operators of credit card systems. 67 FR 21113 (Apr. 29, 2002). FinCEN's rule originally cross-referenced the regulations of the Federal functional regulator and provided that satisfaction of the Federal functional regulator's AML program rule requirements would be deemed to satisfy the requirements of Treasury's rule.

[15] 68 FR 25090 (May 9, 2003). FinCEN issued joint CIP rules separately with the U.S. Securities and Exchange Commission, 68 FR 25113 (May 9, 2003) (brokers or dealers in securities) and 68 FR 25131 (May 9, 2003) (mutual funds), and the U.S. Commodity Futures Trading Commission, 68 FR 25149 (May 9, 2003) (futures commission merchants and introducing brokers).

[16] Title III, sec. 302(b)(1) of Public Law 107–56.

[17] 81 FR 29398 (May 11, 2016).

[18] Title XV, sec. 1564 of Public Law 102–550.

activity reports (SARs), are being used, and to receive advice regarding the modification of those reporting requirements to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes. The Director of FinCEN chairs the BSAAG, and its membership includes representatives from financial institutions, Federal and state regulatory and law enforcement agencies, and trade groups whose members are subject to the requirements of the BSA and its regulations, or Section 6050I of the Internal Revenue Code of 1986. The purposes and membership of the BSAAG make it an important forum for understanding stakeholder views in efforts to reform and modernize the national AML regime.

The BSAAG created an Anti-Money-Laundering Effectiveness Working Group (AMLE WG) in June 2019 to develop recommendations for strengthening the national AML regime by increasing its effectiveness and efficiency. Member stakeholders worked collaboratively throughout 2019 and into 2020 to identify regulatory initiatives that would allow financial institutions to reallocate resources to better focus on national AML priorities set by government authorities, increase information sharing and public-private partnerships, and leverage new technologies and risk-management techniques—and thus increase the efficiency and effectiveness of the nation's AML regime.

The resulting recommendations, summarized below in broad categories, are a collective set of complementary efforts.[19] The October 2019 BSAAG plenary received and endorsed the recommendations from the AMLE WG. This ANPRM is a result of FinCEN's evaluation of those recommendations and a step toward considering their implementation. FinCEN anticipates taking additional steps, such as issuing guidance where appropriate, as FinCEN continues to evaluate the full set of BSAAG recommendations.

a. Developing and Focusing on AML Priorities

The AMLE WG recommended that stakeholders refocus the national AML regime to place greater emphasis on providing information with a high degree of usefulness to government authorities based on national AML priorities, in order to promote effective outputs over auditable processes and to ensure clearer standards for measuring effectiveness in evaluating AML programs. The AMLE WG recommended that the relevant government agencies consider:

- Publishing a regulatory definition of AML program effectiveness;
- Developing and communicating national AML priorities as set by government authorities; and
- Issuing clarifying guidance for financial institutions on the elements of an effective AML program.

b. Reallocation of Compliance Resources

The AMLE WG recommended that stakeholders facilitate BSA compliance resource reallocation by reducing or eliminating activities that are not required by law or regulation, make limited contributions to meeting risk-management objectives, and supply less useful information to government authorities. Resources freed from these activities could be reallocated to address areas of risk and national AML priorities. The AMLE WG recommended that the relevant government agencies consider:

- Clarifying current requirements and supervisory expectations with respect to risk assessments, negative media searches, customer risk categories, and initial and ongoing customer due diligence; and
- Revising existing guidance or regulations in areas such as Politically Exposed Persons and the application of existing model-risk-management guidance to AML systems, in order to improve clarity, effectiveness, and compliance.

c. Monitoring and Reporting

The AMLE WG recommended that AML monitoring and reporting practices be modernized and streamlined to maximize efficiency, quality, and speed of providing data to government authorities with due consideration for privacy and data security. The AMLE WG recommended that the relevant government agencies consider:

- Clarifying expectations and updating practices for keep-open letters and suspicious activity monitoring, investigation, and reporting, including SARs based on grand jury subpoenas or negative media; and
- Supporting potential automation opportunities for high-frequency/low-complexity SARs and currency transaction reports (CTRs), and exploring the possibility of streamlined SARs on continuing activity.

d. Enhancing Information Sharing

Information sharing among financial institutions, regulators, and law enforcement through partnerships and other existing mechanisms is a key component of an effective BSA/AML regime. The AMLE WG recommended steps for enhancing information sharing mechanisms to communicate national AML priorities, related typologies, and emerging threats, such as:

- Forming a BSAAG-established working group with members from law enforcement agencies, regulators, and financial institutions to identify, prioritize, and recommend national AML priorities and advise on opportunities to communicate typologies, red flags, and other information related to national AML priorities;
- Leveraging existing information-sharing initiatives between the public and private sectors, including enhanced use of the BSA's information sharing provisions, sections 314(a) and (b) of the USA PATRIOT Act, and sharing with foreign affiliates and global institutions, as appropriate; and
- Assessing options for FinCEN and law enforcement agencies to provide more feedback to financial institutions related to the use and utility of BSA reports.

e. Advance Regulatory Innovations

The AMLE WG recommended the continued enhancement of the national AML regime to promote the use of responsible innovations to address new and emerging money laundering and terrorist financing risks and the evolving industry landscape, as well as to encourage financial institutions to pursue more effective and efficient BSA compliance practices. Measures recommended include steps that financial institutions could take to better use responsible innovation in meeting CIP requirements—such as third-party software and service providers—and studying the impact of financial technology and other emerging non-bank financial service providers on the AML regime.

III. Elements of an ''Effective and Reasonably Designed'' AML Program

FinCEN, after consulting with the staffs of various supervisory agencies, and having considered the BSAAG recommendations and other BSA modernization efforts, is publishing this ANPRM seeking comment on whether it is appropriate to clearly define a requirement for an ''effective and reasonably designed'' AML program in BSA regulations. Increasing the

[19] The subsections which follow summarize recommendations issued by the BSAAG and do not necessarily reflect current regulatory initiatives, nor do they imply endorsement of, nor commitment by, the relevant government agencies to implement these recommendations.

''effectiveness'' of the national AML regime is a core objective of recent AML modernization efforts. This term often refers to the implementation and maintenance of a compliant AML program, but has no specific, consistent definition in existing regulation. FinCEN believes that incorporating an ''effective and reasonably designed'' AML program requirement with a clear definition of ''effectiveness'' [20] would allow financial institutions to more efficiently allocate resources and would impose minimal additional burden on existing AML programs that already comply under the existing supervisory approach. This requirement would also seek to implement a common understanding between supervisory agencies and their supervised financial institutions on the necessary AML program elements.

Specifically, FinCEN is considering regulatory amendments that would explicitly define an ''effective and reasonably designed'' AML program as one that:

- Identifies, assesses, and reasonably mitigates the risks resulting from illicit financial activity—including terrorist financing, money laundering, and other related financial crimes—consistent with both the institution's risk profile and the risks communicated by relevant government authorities as national AML priorities;
- Assures and monitors compliance with the recordkeeping and reporting requirements of the BSA; and
- Provides information with a high degree of usefulness to government authorities consistent with both the institution's risk assessment and the risks communicated by relevant government authorities as national AML priorities.

As explained in more detail in the sections that follow, this ANPRM also seeks comment on whether the AML program regulations [21] should be amended to establish an explicit requirement for a risk-assessment process, as well as whether the Director of FinCEN should issue every two years a list of national AML priorities, to be called FinCEN's ''Strategic Anti-Money Laundering Priorities.''

A. Identifying and Assessing Risks

The current AML program rules generally require each financial institution to implement a system of internal controls to ''assure ongoing compliance'' [22] with the BSA. This system of internal controls includes the policies, procedures, and processes that not only mitigate the risks associated with the products and services the financial institution offers and the customers it serves, but also ensures the financial institution meets regulatory requirements under the BSA. Under current practice for most financial institutions, the design of an AML program is based on the risks identified and assessed by the financial institution through a risk-assessment process. FinCEN and other supervisory agencies have traditionally viewed a risk assessment as a critical element of a reasonably designed program, because a program cannot be considered reasonably designed to achieve compliance with the recordkeeping and reporting requirements of the BSA unless the institution understands its risk profile.

Even though a financial institution's risk-assessment process is key to ensuring an effective AML program, it is not an explicit regulatory requirement for all types of institutions. Given the importance of the risk-assessment process to establishing an ''effective and reasonably designed'' AML program, FinCEN believes that it warrants explicit incorporation. FinCEN is considering whether its AML program regulations should be amended to require the establishment of a risk-assessment process that includes the identification and analysis of money laundering, terrorist financing, and other illicit financial activity risks faced by the financial institution based on an evaluation of various factors, including its business activities, products, services, customers, and geographic locations in which the financial institution does business or services customers.

FinCEN and the Federal Banking Agencies issued a *Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision* in 2019 that underscored the importance of a risk-based approach. The statement clarifies that these agencies' long-standing supervisory approach to examining for compliance with the BSA considers a financial institution's risk profile and notes that ''[a] risk-based [AML] compliance program enables a bank to allocate compliance resources commensurate with its risk.'' [23] It further clarifies that a well-developed risk-assessment process assists examiners in understanding a bank's risk profile and evaluating the adequacy of its AML program. The statement also explains that, as part of their risk-focused approach, examiners review a bank's risk-management practices to evaluate whether a bank has developed and implemented a reasonable and effective process to identify, measure, monitor, and control risks. Recognizing that many financial institutions are conducting risk assessments, FinCEN seeks comment on the effect to financial institutions' efforts to comply with AML program requirements of adding a regulatory requirement to conduct a risk assessment, and the effect, if any, on burden to financial institutions' processes for complying with AML program requirements.

B. Consideration of the Strategic AML Priorities in the Risk-Assessment Process

This ANPRM also seeks comment on whether regulatory amendments should be made so that an ''effective and reasonably designed'' AML program would require financial institutions to consider and integrate national AML priorities into their risk-assessment processes, as appropriate. FinCEN is considering whether the Director of FinCEN should issue national AML priorities, to be called its ''Strategic Anti-Money Laundering Priorities,'' every two years (or more frequently as appropriate to inform the public and private sector of new priorities). This ANPRM also seeks comment on whether these priorities should be considered, among other information, in a financial institution's risk assessment.

FinCEN does not expect that its Strategic AML Priorities would capture the universe of all AML priorities, nor would they be intended to serve as the only priorities informing a risk-assessment process. Rather, they would seek to articulate FinCEN's existing AML priorities, informed by a wide range of government and private sector stakeholders, leveraging the broader priorities established by the National

[20] There is some variance in the specific AML program requirements for different types of financial institutions, but current AML program regulations for most financial institutions subject to such requirements contain a requirement that either the AML program as a whole, or the implementation of internal controls, is ''reasonably designed.'' In addition, current AML program requirements vary as to whether a financial institution must implement an AML program that is ''reasonably designed'' to achieve compliance with the BSA, ''reasonably designed'' to prevent money laundering or terrorist financing, or both.

[21] *See supra* note 1.

[22] *See, e.g.,* 31 CFR 1020.210(b)(1).

[23] *See* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network, National Credit Union Administration, and Office of the Comptroller of the Currency, Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 22, 2019), *available at https://www.fincen.gov/sites/default/files/2019-10/Joint%20Statement%20on%20Risk-Focused%20Bank%20Secrecy%20Act-Anti-Money%20Laundering%20Supervision%20FINAL1.pdf.*

Illicit Finance Strategy as determined by the Secretary of the Treasury—in consultation with the Departments of Justice, State, and Homeland Security, the Office of the Director of National Intelligence, the Office of Management and Budget, and the staffs of the Federal functional regulators—to better aid U.S. institutions in effectively complying with BSA obligations. Other relevant information that the Director of FinCEN may consider in determining Strategic AML Priorities includes, for example, FinCEN Advisories to financial institutions, which identify emerging risks and provide red flags and typologies that assist financial institutions in identifying and reporting suspicious activity; other relevant Treasury Department communications, including the National Risk Assessments; and information from law enforcement and other government agencies, and others.

C. Risk Management and Mitigation Informed by Strategic AML Priorities

Building upon the prior two concepts—an explicit risk-assessment requirement and the publication of Strategic AML Priorities—this ANPRM also seeks comment as to whether an ''effective and reasonably designed'' AML program should require that financial institutions reasonably manage and mitigate the risks identified in the risk-assessment process by taking into consideration the Strategic AML Priorities, as appropriate and among other relevant information. FinCEN believes that the vast majority of financial institutions are effectively and reasonably managing and mitigating the risks that they have identified. Under any proposal to incorporate a requirement for an ''effective and reasonably designed'' AML program, FinCEN understands that institutions may reallocate resources from other lower-priority risks or practices to manage and mitigate higher-priority risks, including any identified as Strategic AML Priorities.

Financial institutions may consider how FinCEN's Strategic AML Priorities impact and inform the risk assessment based on the institution's size, complexity, business activities, products, services, customers, and geographic locations in which the financial institution does business or services customers. This might enhance the financial institution's engagement with law enforcement and FinCEN to provide information with a high degree of usefulness to government authorities. In addition, a financial institution may be better able to engage with the appropriate level of Federal, state, or local law enforcement and other government officials to better understand and address risks within that jurisdiction. This might improve information sharing, to include requests from FinCEN or other government authorities, as well as participation in public-private information sharing forums.

FinCEN recognizes that financial institutions may utilize different means to demonstrate effectiveness and anticipates that some financial institutions may determine that their AML programs already sufficiently assess and mitigate the risks identified as Strategic AML Priorities. FinCEN also anticipates that many financial institutions may determine that their business models and risk profiles reflect limited exposure to risks posed by the threats identified as Strategic AML Priorities, but may reflect greater exposure to significant and legitimate risks that may not be identified as Strategic AML Priorities. FinCEN recognizes and appreciates financial institutions must continue to identify, reasonably manage, and mitigate these risks consistent with financial institutions' risk-management processes.

D. Assuring and Monitoring Compliance With the Recordkeeping and Reporting Requirements of the BSA

FinCEN does not expect that any regulatory changes made in response to this ANPRM would alter the recordkeeping and reporting requirements contained in existing BSA regulations. However, this ANPRM seeks comment as to whether financial institutions' AML program obligations should be based on the risks identified by the financial institution, to include consideration of Strategic AML Priorities, where appropriate and among other information. For example, a financial institution's process for the implementation of certain requirements, such as monitoring for suspicious activity, is based on risk. Making clear that compliance with this aspect of the AML program requirement is risk-based is consistent with the objectives of increasing effectiveness and efficiency. It also reflects long-standing supervisory approaches and expectations.

E. Providing Information With a High Degree of Usefulness

FinCEN believes that the proposed regulatory approach in this ANPRM furthers the statutory BSA purpose of providing information with a high degree of usefulness to government authorities. These regulatory amendments would explicitly define as a goal of the AML program that financial institutions provide information with a high degree of usefulness to government authorities consistent with the financial institution's risk assessment and Strategic AML Priorities, among other relevant information. FinCEN recognizes that many financial institutions have developed specialized units that focus on complex investigations. In addition, financial institutions of all sizes may collaborate with Federal, state, and local law enforcement, receive outreach from the government's SAR Review Teams, and often be willing to engage on relevant issues in their community. FinCEN expects that any future regulatory amendments to incorporate a requirement for an ''effective and reasonably designed'' AML program would seek to provide a framework to recognize that these and other collaborative efforts may provide information with a high degree of usefulness to government authorities. This recognition, in turn, may provide further incentive for financial institutions to undertake and apply resources towards these important initiatives to combat money laundering, terrorist financing, and other related illicit financial crime. Such an approach has the potential to increase the overall effectiveness of the national AML regime by better enabling law enforcement and other users of BSA reporting to address priority threats to the U.S. financial system.

IV. Issues for Comment

Based on the foregoing, FinCEN is seeking comment from the public, including industry, law enforcement, regulators, other consumers of BSA data, and any other interested parties, concerning a potential rulemaking to incorporate a requirement for an ''effective and reasonably designed'' AML program into AML program regulations and to provide clarity on its application. Specifically, FinCEN requests public comment on the following:

Question 1: Does this ANPRM make clear the concept that FinCEN is considering for an ''effective and reasonably designed'' AML program through regulatory amendments to the AML program rules? If not, how should the concept be modified to provide greater clarity?

Question 2: Are this ANPRM's three proposed core elements and objectives of an ''effective and reasonably designed'' AML program appropriate? Should FinCEN make any changes to the three proposed elements of an ''effective and reasonably designed''

AML program in a future notice of proposed rulemaking?

As described above, FinCEN is considering regulatory amendments that would define an ''effective and reasonably designed'' program as one that:

- Identifies, assesses, and reasonably mitigates the risks resulting from illicit financial activity, including terrorist financing, money laundering, and other related financial crimes, consistent with both the institution's risk profile and the risks communicated by relevant government authorities as national AML priorities;
- Assures and monitors compliance with the recordkeeping and reporting requirements of the BSA; and
- Provides information with a high degree of usefulness to government authorities consistent with both the institution's risk assessment and the risks communicated by relevant government authorities as national AML priorities.

Question 3: Are the changes to the AML regulations under consideration in this ANPRM an appropriate mechanism to achieve the objective of increasing the effectiveness of AML programs? If not, what different or additional mechanisms should FinCEN consider?

Question 4: Should regulatory amendments to incorporate the requirement for an ''effective and reasonably designed'' AML program be proposed for all financial institutions currently subject to AML program rules? Are there any industry-specific issues that FinCEN should consider in a future notice of proposed rulemaking to further define an ''effective and reasonably designed'' AML program?

FinCEN notes that, as regulations for different segments of the financial industry have been promulgated at different times in the past, such AML program regulations have evolved and, consequently, contain provisions that differ among the various industries subject to AML program requirements. For example, the AML program requirement for money services businesses (31 CFR 1022.210(a)) already contains an effectiveness component.[24] FinCEN invites comments from all covered industries subject to AML program regulations as to how a requirement for an ''effective and reasonably designed'' AML program would impact their industry. Furthermore, FinCEN invites comment as to whether any industry-specific modifications would be appropriate to consider in future rulemaking.

Question 5: Would it be appropriate to impose an explicit requirement for a risk-assessment process that identifies, assesses, and reasonably mitigates risks in order to achieve an ''effective and reasonably designed'' AML program? If not, why? Are there other alternatives that FinCEN should consider? Are there factors unique to how certain institutions or industries develop and apply a risk assessment that FinCEN should consider? Should there be carve-outs or waivers to this requirement, and if so, what factors should FinCEN evaluate to determine the application thereof?

Question 6: Should FinCEN issue Strategic AML Priorities, and should it do so every two years or at a different interval? Is an explicit requirement that risk assessments consider the Strategic AML Priorities appropriate? If not, why? Are there alternatives that FinCEN should consider?

Question 7: Aside from policies and procedures related to the risk-assessment process, what additional changes to AML program policies, procedures, or processes would financial institutions need to implement if FinCEN implemented regulatory changes to incorporate the requirement for an ''effective and reasonably designed'' AML program, as described in this ANPRM? Overall, how long of a period should FinCEN provide for implementing such changes?

FinCEN seeks comment on specific programmatic changes. For example, how might the allocation of personnel change because of the possible regulatory amendments discussed in this ANPRM, and what processes would be required to reallocate AML compliance resources for different responsibilities? How long would such programmatic changes take to conceive, test, and implement? Would this vary by size of institution or across industry segments? If so, how? In addition to due diligence and monitoring processes, what other methods to mitigate risks are financial institutions engaged in? Should FinCEN add via future regulation more specific risk-mitigation requirements to ensure that controls are commensurate with the risks undertaken, and how might these risk-mitigation requirements vary by industry?

Question 8: As financial institutions vary widely in business models and risk profiles, even within the same category of financial institution, should FinCEN consider any regulatory changes to appropriately reflect such differences in risk profile? For example, should regulatory amendments to incorporate the requirement for an ''effective and reasonably designed'' AML program be proposed for all financial institutions within each industry type, or should this requirement differ based on the size or operational complexity of these financial institutions, or some other factors? Should smaller, less complex financial institutions, or institutions that already maintain effective BSA compliance programs with risk assessments that sufficiently manage and mitigate the risks identified as Strategic AML Priorities, have the ability to ''opt in'' to making changes to AML programs as described in this ANPRM?

FinCEN appreciates that financial institutions vary considerably in size and complexity, and even well-intentioned regulatory actions that impact such a diverse collection of financial institutions can result in unintended consequences. Accordingly, FinCEN specifically requests comment on how the practical impact of the regulatory proposals described in this ANPRM could vary in implementation for institutions of differing size and complexity, and whether changes in approach—such as an opt-in decision—would be advisable. If greater flexibility is recommended, FinCEN requests comments as to whether any resultant divergence in AML program implementation might present financial crime vulnerabilities, and if so, how such vulnerabilities could be mitigated. If different requirements are recommended based on the size and/or operational complexity of financial institutions, please describe what thresholds and parameters might be appropriate, and why.

Question 9: Are there ways to articulate objective criteria and/or a rubric for examination of how financial institutions would conduct their risk-assessment processes and report in accordance with those assessments, based on the regulatory proposals under consideration in this ANPRM?

FinCEN appreciates that, in order for the regulatory proposals as described in this ANPRM to achieve the objective of increased effectiveness of the overall U.S. AML regime, the supervisory process must support and reinforce this objective. Indeed, FinCEN has consulted with the staffs of various Federal supervisory agencies in developing this ANPRM, and FinCEN requests comments on how the supervisory regime could best support the objectives as identified in this ANPRM.

[24] Specifically it provides that each money services business, as defined by § 1010.100(ff), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

Question 10: Are there ways to articulate objective criteria and/or a rubric for independent testing of how financial institutions would conduct their risk-assessment processes and report in accordance with those assessments, based on the regulatory proposals under consideration in this ANPRM?

FinCEN appreciates that the regulatory proposals described in this ANPRM may require changes in the implementation of independent testing by financial institutions in order to achieve the objectives as described in this ANPRM. Therefore, FinCEN also seeks comments on how a future rulemaking could best facilitate effective independent testing of risk assessments and other financial institution processes, as may be revised consistent with the proposals set forth in this ANPRM.

Question 11: A core objective of the incorporation of a requirement for an ''effective and reasonably designed'' AML program would be to provide financial institutions with greater flexibility to reallocate resources towards Strategic AML Priorities, as appropriate. FinCEN seeks comment on whether such regulatory changes would increase or decrease the regulatory burden on financial institutions. How can FinCEN, through future rulemaking or any other mechanisms, best ensure a clear and shared understanding in the financial industry that AML resources should not merely be reduced as a result of such regulatory amendments, but rather should, as appropriate, be reallocated to higher priority areas?

FinCEN specifically encourages commenters to provide quantifiable data, if available, that supports any views on whether the regulatory proposals under consideration would impact financial institutions' regulatory burden. FinCEN also invites comment with regard to how FinCEN and other supervisory authorities could best reinforce the importance of maintaining an appropriate level of BSA compliance resources if regulatory amendments are promulgated as described in this ANPRM.

V. Conclusion

With this ANPRM, FinCEN is seeking input on the questions set forth above. FinCEN is soliciting comments on the impact to the public, including industry, law enforcement, regulators, other consumers of BSA data, and any other interested parties, and welcomes comments on all aspects of the ANPRM. All interested parties are encouraged to provide their views.

VI. Special Analysis

This advance notice of proposed rulemaking is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Dated: September 14, 2020.

Michael Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–20527 Filed 9–16–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 302

RIN 0970–AC81

Optional Exceptions to the Prohibition Against Treating Incarceration as Voluntary Unemployment Under Child Support Guidelines

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Child Support Enforcement proposes to provide States the flexibility to incorporate in their State child support guidelines two optional exceptions to the prohibition against treating incarceration as voluntary unemployment. Under the proposal, States have the option to exclude cases where the individual is incarcerated due to intentional nonpayment of child support resulting from a criminal case or civil contempt action in accordance with guidelines established by the state and/or incarceration for any offense of which the individual's dependent child or the child support recipient was a victim. The State may apply the second exception to the individual's other child support cases.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before November 16, 2020.

ADDRESSES: You may submit comments, identified by [docket number ACF–2020–0002 and/or Regulatory Information Number (RIN) number 0970–AC81], by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, *Attention:* Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Anne Miller, Division of Policy and Training, OCSE, telephone (202) 401–1467. Email inquiries to *ocse.dpt@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or recommended changes. Additionally, we will be interested in comments that indicate agreement with the proposals. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the final rule.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act.

Background

The purpose of the Flexibility, Efficiency and Modernization in Child Support Programs (FEM) final rule published in the **Federal Register** on December 20, 2016 (81 FR 93492) was to make Child Support Enforcement program operations and enforcement procedures more flexible, more effective, and more efficient by building on the strengths of existing State enforcement programs, recognizing advancements in technology, and incorporating technical fixes. The final rule was intended to improve and simplify program operations and remove outmoded limitations to program innovations, in order to better serve families.

The FEM final rule revised the guidelines regulations under 45 CFR 302.56—Guidelines for setting child support orders. The revisions ensure that States design their guidelines so that they result in orders that accurately reflect a noncustodial parent's ability to pay. Setting child support orders that reflect an actual ability to pay is crucial to encouraging compliance, increasing accountability, discouraging uncollectable arrears, and improving collections for families.

One important change to the guidelines regulations was to prohibit States from treating incarceration as voluntary unemployment when establishing or modifying support orders. The rationale for this change was the concern that State policies that treat incarceration as voluntary unemployment effectively block application of the Federal review and adjustment law in section 466(a)(10) of the Act. This section of the Act requires review, and if appropriate, adjustment of a support order upward or downward upon a showing of a substantial change in circumstances. Voluntary unemployment, which States do not consider a substantial change in circumstances, occurs when an individual intentionally reduces income by quitting a job, failing to seek employment, or working in a job beneath their skill set or education level, in order to avoid child support obligations. Prior to issuance of the FEM final rule, some states treated incarceration as voluntary unemployment since it was the result of a conviction for an intentional criminal act and imputed income to the obligor in calculating the child support obligation. By prohibiting States from treating incarceration as voluntary unemployment, incarcerated individuals are provided the opportunity to have their child support order reviewed and adjusted in accordance with State child support guidelines and their actual income and ability to pay. The FEM final rule cited research noting the importance of ensuring that incarcerated individuals can adjust their child support orders to have the order reflect their actual ability to pay and prevent accumulation of arrears.

During the FEM rulemaking process, OCSE received several comments in support of requiring exceptions to the prohibition against treating incarceration as voluntary unemployment in cases where the noncustodial parent has committed acts of violence against the children or a party in the child support case, or for willful failure to pay child support. In the final rule, OCSE did not agree with the commenters' requests to mandate exceptions, citing the overwhelming number of commenters in favor of the prohibition and the principle, as stated above, that treatment of incarceration as voluntary unemployment would block the fair application of Federal review and adjustment law and procedures.

Since the publication of the FEM final rule, OCSE has received requests for flexible and optional exceptions in State guidelines from the prohibition against treating incarceration as voluntary unemployment. The requests were for limited exceptions for incarceration due to intentional nonpayment of child support and for any offense of which the individual's dependent child or the child support recipient was a victim. In contrast to the suggestions by commenters under the FEM rulemaking process, these requests were for optional, not mandatory, exceptions for States.

In consideration of Administration priorities for de-regulation and State flexibility, and our expectation that these exceptions would affect very few cases, OCSE has determined that it is appropriate to provide States the option to adopt in their guidelines these limited exceptions to the regulatory prohibition against treating incarceration as voluntary unemployment. These proposed optional exceptions provide a narrow window of flexibility to address egregious cases of willful child support nonpayment (cases where the obligor has the ability to pay, but intentionally fails to do so) or violence or abuse against the child or child support recipient. This proposed rule does not impose mandates; rather, it provides states an option for limited exceptions. The rationale to the proposed change in policy is to provide states the option to prevent obligors from benefiting from two specific types of crimes committed against the child or child support recipient. Some states, based on moral and societal values of justice and fairness, may reasonably determine that persons found guilty of intentional nonsupport, or who show a disregard for the well-being of the custodial parent or child by abusing them, should not benefit from those acts by having their child support obligation suspended or reduced while incarcerated for those crimes—even if that policy risks accumulation of arrears, child support debt, and recidivism. The proposed optional exceptions are narrow and do not change the overall policy goal that, in the majority of cases, it is important to prevent the accumulation of arrears by noncustodial parents who are incarcerated and do not have an ability to pay child support.

We propose to revise § 302.56(c)(3) to allow a State the option to adopt limited exceptions in their guidelines to the regulatory prohibition against treating incarceration as voluntary unemployment. These proposed exceptions, under § 302.56(c)(3)(i) and (ii), would be for incarceration (1) due to intentional nonpayment of child support resulting from a criminal case or civil contempt action in accordance with guidelines established by the State under § 303.6(c)(4); and/or (2) for any offense of which the individual's dependent child or the child support recipient was a victim. The state would be able to apply the second exception to the individual's other child support cases, if any. States, not the Federal Government, are in the best position to decide whether or not it is prudent public policy to afford relief from child support payment obligations to individuals who are incarcerated for intentional nonpayment of support or for offenses for which the individual's dependent children or the child support recipient are victims.

Federal regulations at § 303.6(c)(4)—Enforcement of support obligations, require States to establish guidelines for the use of civil contempt citations in child support cases. The guidelines must include requirements that the child support agency screen cases for information regarding the noncustodial parent's ability to pay or otherwise comply with the order. To ensure consistency with these existing civil contempt guidelines, the proposed exception in § 302.56(c)(3)(i) for incarceration related to intentional nonpayment of support in civil contempt actions would apply the same requirements under § 303.6(c)(4) to ensure that incarceration is for individuals that have the ability to pay, but choose not to do so. This proposed exception would not apply where nonpayment of support is due to inability to pay. Such cases should not result in incarceration of the obligor. This exception is consistent with the principles of the FEM final rule that child support orders are based on the noncustodial parent's ability to pay and that civil contempt procedures must take into account present ability to pay. A State that adopts the proposed exception for incarceration due to intentional nonpayment of child support would be able to treat the incarcerated noncustodial parent as voluntarily unemployed when establishing or modifying a support order.

Since States are more knowledgeable about their caseloads and the specific circumstances affecting families, they should have the option to determine if these limited exceptions should apply to the regulatory prohibition against treating incarceration as voluntary unemployment. Under proposed § 302.56(c)(3)(ii), in cases where incarceration is for offenses against the individual's dependent children or the child support recipient, States should have maximum flexibility to decide if the exception may apply to the individual's other child support cases.

This proposal for optional, limited exceptions to a provision under § 302.56 does not affect regulations for review and adjustment of support orders, including notice requirements under § 303.8(b)(2) and (b)(7)(ii). We are not proposing to revise the notice requirements in § 303.8(b)(2) and (b)(7)(ii), because it is our view that states should continue to provide notice to both parents in cases where these exceptions might apply. Even if a State were to elect one of the proposed exceptions in § 302.56(c)(3), a review and adjustment under the State's guidelines in § 302.56 may still be appropriate, given the circumstances in the case. For example, a noncustodial parent may have or recently acquired additional sources of income or resources that should be taken into account in the review process.

Section-by-Section Discussion of the Provisions of This Proposed Rule

Section 302.56: Guidelines for Setting Child Support Orders

We propose to revise § 302.56(c)(3) to allow a State the option to adopt limited exceptions in their child support guidelines to the regulatory prohibition against treating incarceration as voluntary unemployment. These proposed optional exceptions in § 302.56(c)(3)(i) and (ii) are for cases that include incarceration (1) due to intentional nonpayment of child support resulting from a criminal case or civil contempt action in accordance with guidelines established by the State under § 303.6(c)(4); and/or (2) for any offense of which the individual's dependent child or the child support recipient was a victim. We ensure that the exercise of the first exception is consistent with guidelines for the use of civil contempt citations in child support cases—which requires that the child support agency screen cases for information regarding the noncustodial parent's ability to pay or otherwise comply with the order—by proposing to specify that the exception must be exercised in accordance with such guidelines. The State would be able to apply the second exception to the individual's other child support cases, if any. The rationale for allowing limited, optional exceptions to the prohibition against treating incarceration as voluntary unemployment is to ensure that States have flexibility to manage caseloads and their guidelines requirements. We expect these exceptions would affect very few cases.

Paperwork Reduction Act

No new information collection requirements are imposed by these regulations. However, under the proposal, all States would need to resubmit the state plan preprint page 3.11. This Paperwork Reduction Act activity is already approved under OMB Control No. 0970–0017. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, are fulfilled.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF determined that the costs to title IV–D agencies as a result of this rule will not be significant as defined in Executive Order 12866 (have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This proposed rule is expected to be an Executive Order 13771 deregulatory action.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $156 million. This proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $156 million or more.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on States or families. This regulation will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

List of Subjects in 45 CFR Part 302

Child support, State plan requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: August 7, 2020.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: August 7, 2020.

Alex M. Azar II,

Secretary.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 302 as set forth below:

PART 302—STATE PLAN REQUIREMENTS

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

■ 2. Amend § 302.56 by revising paragraph (c)(3) to read as follows:

§ 302.56 Guidelines for setting child support orders.

* * * * *

(c) * * *

(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. The state may elect to exclude:

(i) Incarceration due to intentional nonpayment of child support resulting from a criminal case or civil contempt action, in accordance with guidelines established by the State under § 303.6(c)(4); and/or

(ii) Incarceration for any offense of which the individual's dependent child or the child support recipient was a victim. The State may apply the exception under this paragraph (c)(3)(ii) to the individual's other child support cases.

* * * * *

[FR Doc. 2020–17747 Filed 9–16–20; 8:45 am]

BILLING CODE 4184–42–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 20–221; FCC 20–92; FRS 17053]

Updating the Commission's Ex Parte Rules; Correction

AGENCY: Federal Communications Commission

ACTION: Proposed rule; correction.

SUMMARY: In this document, the Commission is correcting a date that appeared in the **Federal Register** on September 2, 2020. In this document, the Commission begins a new proceeding to consider several updates to the Commission's ex parte rules. First, the Commission seeks comment on a proposal to exempt from its ex parte rules, in certain proceedings, government-to-government consultations between the Commission and federally recognized Tribal Nations. Second, the Commission seeks comment on a proposal to extend the exemption to its ex parte rules for communications with certain program administrators, such as the Universal Service Administrative Company, to include the Toll-Free Numbering Administrator and the Reassigned Numbers Database Administrator, and to clarify the conditions under which this exemption applies. Third, the Commission seeks comment on a proposal to require that all written ex parte presentations and written summaries of oral ex parte presentations (other than presentations that are permitted during the Sunshine period) be submitted before the Sunshine period begins and to require that replies to these ex parte presentations be filed within the first day of the Sunshine period. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mr. Max Staloff of the Office of General Counsel, at (202) 418–1764, or *Max.Staloff@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 2, 2020 in FR Doc. 20–17266, on page 54523, in the second column, correct the **DATES** caption to read:

DATES: Comments due on or before October 2, 2020; reply comments due on or before October 19, 2020.

Dated: September 2, 2020.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–19949 Filed 9–16–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 181
Thursday, September 17, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. 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 the Texas Advisory Committee (Committee) will hold a series of meetings via teleconference on Thursday, October 1, 2020 and Thursday, October 15, 2020 at 3:00 p.m., and Wednesday, October 28, 2020 at 12:00 p.m. Central Time. The purpose of the meetings is for the committee to plan upcoming online panels on Government Response to Hurricane Disasters.

DATES: The meetings will be held on:

- Thursday, October 1, 2020 at 3:00 p.m. CDT.
- Thursday, October 15, 2020 at 3:00 p.m. CDT.
- Wednesday, October 28, 2020 at 12:00 p.m. CDT.

Public Call Information:
Dial: 866–248–8441.
Conference ID: 1895260.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 866–248–8441, conference ID number: 1895260. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Introductions
II. Approval of Minutes
III. Discussion of Panels
IV. Public Comment
V. Adjournment

Dated: September 14, 2020.

David Mussatt,
Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–20526 Filed 9–16–20; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Webhearing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Oregon Advisory Committee (Committee) to the Commission will hold a briefing via web conference from 2 p.m. to 3:30 p.m. (PDT) on Friday, September 25, 2020. The purpose of the meeting is to hear testimony from Laura Appleman, Associate Dean of Faculty and Van Winkle Melton Professor of Law at Willamette University (*https://willamette.edu/law/faculty/profiles/appleman/index.html*) regarding the federal and state legislative history of bail practices.

DATES: Friday, September 25, 2020 from 2 p.m.–3:30 p.m. PDT.

Public Call–In Information (audio only): Dial: (404) 397–1590, Access code: 199 625 8457.

Web Access Information (*visual only*): The online portion of the meeting may be accessed through the following link Webex: *http://bit.ly/ORSACBAIL.*

Meeting Number: 199 625 8457.
Password: ORSAC92590.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov.* or by phone (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 6739669. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the

Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzlwAAA.* Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Presentation by Laura Appleman, Associate Dean of Faculty and Van Winkle Melton Professor of Law at Willamette University
III. Committee Q & A
VI. Public Comment
V. Adjournment

Dated: September 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–20545 Filed 9–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2020]

Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona; Authorization of Production Activity; Rauch North America, Inc. (Non-Alcoholic Beverages), Waddell, Arizona

On May 15, 2020, Rauch North America, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 277, in Waddell, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 33087–33088, June 1, 2020). On September 14, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: September 14, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–20518 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 14, 2020 from 10:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, October 15, 2020 from 10:00 a.m. until 5:00 p.m., Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 14, 2020, from 10:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, October 15, 2020, from 10:00 a.m. until 5:00 p.m., Eastern Time.

ADDRESSES: The meeting will be a virtual meeting via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Jeff Brewer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–2489, Email address: *jeffrey.brewer@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ISPAB will hold an open meeting Wednesday, October 14, 2020 from 10:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, October 15, 2020 from 10:00 a.m. until 5:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including through review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *https://csrc.nist.gov/projects/ispab.*

The agenda is expected to include the following items:

—Discussions on Solarium Recommendations,

—Presentation on Bug Bounties in the U.S. Government,

—Presentations on 5G Security Issues,

—Presentation on NIST's Post Quantum Cryptography Project,

—Discussions on Software Assurance and use of Open Source Software in the U.S. Government,

—Presentations on Hardware Security,

—Update from NIST's Information Technology Laboratory (ITL) Director; and a Public Comment Period.

Note that agenda items may change without notice. The final agenda will be posted on the ISPAB event page at: *https://csrc.nist.gov/Events/2020/ispab-october-2020-meeting.*

Public Participation: Written questions or comments from the public are invited and may be submitted electronically by email to Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. October 13, 2020. The ISPAB agenda will include a period, not to exceed thirty minutes, for submitted questions or comments from the public (Wednesday, October 14, 2020, between 4:30 p.m. and 5:00 p.m.). Submitted questions or comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a question or comment but could not be accommodated on the agenda, and those who were unable to attend the meeting via webinar are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory by email to: *jeffrey.brewer@nist.gov.*

Admittance Instructions: All participants will be attending via webinar and must register on ISPAB's event page at: *https://csrc.nist.gov/Events/2020/ispab-october-2020-meeting* by 5 p.m. Eastern Time, October 12, 2020.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–20536 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee) will hold an open meeting via web conference on Friday, October 23, 2020, from 10:00 a.m. to 12:00 p.m. Eastern Time. The primary purpose of this meeting is to update the Committee on the status of the NCST investigation focused on the impacts of Hurricane Maria on Puerto Rico and related NCST activities, including event scoring and readiness of teams. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee.*

DATES: The NCST Advisory Committee will meet on Friday, October 23, 2020, from 10:00 a.m. to 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via web conference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Dillard, Disaster and Failure Studies Program, Engineering Laboratory, NIST. Maria Dillard's email address is *Maria.Dillard@nist.gov* and her phone number is (202) 281–0908.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the NCST Act (Pub. L. 107–231, codified at 15 U.S.C. 7301 *et seq.*). The Committee is currently composed of six members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams. The Committee advises the Director of NIST on carrying out the NCST Act; reviews the procedures developed for conducting investigations; and reviews the reports issued documenting investigations. Background information on the NCST Act and information on the NCST Advisory Committee is available at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will meet on Friday, October 23, 2020, from 10:00 a.m. to 12:00 p.m. Eastern Time. The meeting will be open to the public and will be held via web conference. There will be no central meeting location. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number. The primary purpose of this meeting is to update the Committee on the status of the NCST investigation focused on the impacts of Hurricane Maria on Puerto Rico and related NCST activities, including event scoring and readiness of teams. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-served basis. Public comments can be provided via email or by web conference attendance. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Gwynaeth Broome at *gwynaeth.broome@nist.gov* by 5:00 p.m. Eastern Time, Tuesday, October 13, 2020. Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements by email to *gwynaeth.broome@nist.gov.*

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, Tuesday, October 13, 2020, to attend. Please submit your full name, email address, and phone number to Gwynaeth Broome at *gwynaeth.broome@nist.gov.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–20537 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA469]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Southern Oregon/Northern California Coast (SONCC) Coho Workgroup (Workgroup) will host an online meeting over a two-day period that is open to the public.

DATES: The online meeting will be held Tuesday and Wednesday, October 6–7, 2020 starting at 9 a.m. (Pacific Daylight Time) and ending at 5 p.m. daily, or until business for the day is complete.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss any associated modeling and analysis needed to develop a risk analysis and consider potential alternatives for a harvest control rule for Pacific Council consideration at their November 2020 meeting. The Workgroup may also discuss and prepare for future Workgroup meetings and future meetings with the Pacific Council and its advisory bodies. This is a public meeting and not a public hearing. Public comments will be taken at the discretion of the Workgroup chair as time allows.

Although non-emergency issues not contained in the Workgroup meeting agendas may come before the Workgroup for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically

listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 14, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–20534 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA436]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Citizen Science Operations Committee via webinar.

DATES: The Citizen Science Operations Committee meeting will be held via webinar on Friday, October 2, 2020, from 1 p.m. until 2 p.m.

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 Julia Byrd (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Citizen Science Operations Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's Citizen Science Advisory Panel, NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, and the Council's Science and Statistical Committee. Their responsibilities include developing programmatic recommendations, reviewing policies, providing program direction/multi-partner support, identifying citizen science research needs, and providing general advice.

Agenda Items Include

1. Brainstorming and refining the Citizen Science Program's vision.
2. Discuss any remaining Program evaluation issues, as needed.
3. Other Business.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 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: September 14, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–20533 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA487]

Nominations for Advisory Committee and Species Working Group Technical Advisor Appointments to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of request for nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for Technical Advisors to the Advisory Committee's species working groups.

DATES: Nominations must be received by October 16, 2020.

ADDRESSES: Nominations, including a letter of interest and a resume or curriculum vitae, should be sent via email to Rachel O'Malley at *rachel.o'malley@noaa.gov* with a copy to Bryan Keller at *bryan.keller@noaa.gov.* Include in the subject line whether the nomination is for an Advisory Committee member or for a Technical Advisor to a species working group.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs and Seafood Inspection; email: *bryan.keller@noaa.gov;* phone: 301–427–7725.

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

ICCAT was established to provide an effective program of international cooperation in research and conservation in recognition of the unique problems related to the highly migratory nature of tunas and tuna-like species. The International Convention for the Conservation of Atlantic Tunas (Convention) entered into force in 1969 after receiving the required number of ratifications. The ICCAT Commission usually holds an Annual Meeting in November of each year, and convenes meetings of working groups and other ICCAT bodies between annual meetings as needed. Under Section 971a of ATCA (16 U.S.C. 971 *et seq.*), the United States is represented on the Commission by not more than three U.S. Commissioners. Additional information about the Commission is available at *www.iccat.int.*

Advisory Committee and Species Working Groups to the U.S. Section to the ICCAT

Section 971b of ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be comprised of: (1) Not less than 5 nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf of Mexico Fishery Management

Councils. Each member of the Advisory Committee appointed under paragraph (1) shall serve for a term of 2 years and be eligible for reappointment. The Committee meets at least twice a year during which members receive information and provide advice on ICCAT-related matters. All members of the Advisory Committee are appointed in their individual professional capacity and undergo a background screening. Any individual appointed to the Committee who is unable to attend all or part of an Advisory Committee meeting may not appoint another person to attend such meetings as his or her proxy. Members of the Advisory Committee shall receive no compensation for their services. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee. The terms of all currently appointed Advisory Committee members expire on December 31, 2020. NMFS is soliciting nominees to serve as members of the Advisory Committee for a term of 2 years that will begin January 1, 2021 and expire December 31, 2022.

Section 971b–1 of ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and to the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four Technical Advisors, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners: A Bluefin Tuna Working Group, a Swordfish/Sharks Working Group, a Billfish Working Group, and a Bigeye, Albacore, Yellowfin, and Skipjack Tunas Working Group. Technical Advisors to the species working groups serve at the pleasure of the Commissioners; therefore, the Commissioners can choose to alter these appointments at any time. As with Committee Members, Technical Advisors may not be represented by a proxy during meetings of the Advisory Committee.

Procedure for Submitting Nominations

Nominations to the Advisory Committee, or to a species working group, should include a letter of interest and a resume or curriculum vitae. Self-nominations are acceptable. Letters of recommendation are useful but not required. When making a nomination, please specify which appointment (Advisory Committee member or Technical Advisor to a species working group) is being sought. Nominees may also indicate which of the species working groups is preferred, although placement on the requested group is not guaranteed.

Dated: September 13, 2020.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2020–20489 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA486]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan (Permit No. 23467–01); Jennifer Skidmore (Permit Nos. 18902–01 and 19590–02), and Erin Markin (Permit No. 23836); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
18902–01	0648–XD856	Colleen Reichmuth, Ph.D., Long Marine Laboratory, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95064.	81 FR 2846; January 19, 2016.	August 31, 2020.
19590–02	0648–XE022	Terrie M. Williams, Ph.D., Long Marine Laboratory, University of California Santa Cruz, 115 McAllister Way, Santa Cruz, CA 95060.	80 FR 59738; October 2, 2015.	August 31, 2020.
23467–01	0648–XA119	Sarah Conner, Wild Space Productions, St. Stephens House, Colston Avenue, Bristol, BS1 4ST, United Kingdom.	85 FR 21837; April 20, 2020 ..	August 3, 2020.
23836	0648–XA232	Wildstar Films, Ltd., Embassy House, Queens Avenue, Bristol, BS8 1SB, United Kingdom (Responsible Party: Jo Harvey).	85 FR 36377; June 16, 2020	August 21, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and

policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: September 14, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–20495 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA493]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a 1-day meeting via webinar of its Reef Fish Advisory Panel (AP).

DATES: The meeting will be held on Tuesday, October 6, 2020, from 9 a.m. to 5:30 p.m., EDT.

ADDRESSES: The meeting will take place via webinar; you may register by visiting *www.gulfcouncil.org* and clicking on the Advisory Panel meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, October 6, 2020; 9 a.m.–5:30 p.m., EDT

The meeting will begin with Introductions and Adoption of Agenda, and review of Scope of Work. The AP will review presentations, documents, Draft Reef Fish Amendment 53: Red Grouper Allocations and Annual Catch Levels and Targets, SEDAR 67: Gulf of Mexico Vermilion Snapper Stock Assessment, SEDAR 64: Southeastern U.S. Yellowtail Snapper Stock Assessment, Gray Triggerfish Interim Analysis, and Draft Reef Fish Framework Action: Modification of the Gulf of Mexico Lane Snapper Annual Catch Limit.

The AP will review a Public Hearing Draft Amendment 36B: Modifications to Commercial Individual Fishing Quota (IFQ) Programs, receive a presentation on *Testing assumptions about sex change and spatial management in the protogynous gag grouper, Mycteroperca microlepis;* and, receive public comments.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the AP meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda 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 Council's intent to take action to address the emergency.

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

Dated: September 14, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–20535 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2020–0036]

Deferred-Fee Provisional Patent Application Pilot Program and Collaboration Database To Encourage Inventions Related To COVID–19

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: Patents and published patent applications provide a key source of free-flowing technical information among the world's brightest minds, thus promoting further innovation. The United States Patent and Trademark Office (USPTO or Office) recognizes that its charge to issue high-quality patents to inventors goes hand-in-hand with dissemination of this important information. Such information flow is now more important than ever in view of the urgent challenges posed by COVID–19. Therefore, the USPTO is implementing a deferred-fee provisional patent application pilot program (the program) to promote the expedited exchange of information about inventions designed to combat COVID–19. Under this program, the USPTO will permit applicants to defer payment of the provisional application filing fee until the filing of a corresponding nonprovisional application. In turn, applicants must agree that the technical subject matter disclosed in their provisional applications will be made available to the public via a searchable collaboration database maintained on the USPTO's website. To qualify for the program, the subject matter disclosed in the provisional application must concern a product or process related to COVID–19, and such product or process must be subject to an applicable Food and Drug Administration (FDA) approval for COVID–19 use, whether such approval has been obtained, is pending, or will be sought prior to marketing the subject matter for COVID–19.

DATES: Comments must be received by November 16, 2020 to ensure consideration.

Pilot Duration: The deferred-fee provisional patent application pilot program will accept certifications and requests for participation for a period of 12 months, beginning on September 17, 2020. The USPTO may extend the pilot program (with or without modifications) or terminate it depending on the workload and resources needed to administer it, feedback from the public, and its effectiveness. Depending on feedback and public interest, the technological scope could also be expanded beyond COVID–19 to other areas that are the focus of pioneering or rapid innovation. If the pilot program is extended or terminated, the USPTO will notify the public. The USPTO may also make the program permanent via the rule-making process.

ADDRESSES: Comments should be sent by email addressed to *Covid19ProvisionalApplication@uspto.gov.* If submission of comments by

email is not feasible due to, *e.g.,* a lack of access to a computer and/or the internet, please contact the USPTO for special instructions using the contact information provided in the **FURTHER INFORMATION** section of this notice below.

Comments will be available for viewing via the USPTO's website (*https://www.uspto.gov*). Because the comments will be made available for public viewing, information the submitter does not desire to make public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, Editor of the Manual of Patent Examining Procedure (MPEP) (telephone at 571–272–7735, email at *robert.clarke@uspto.gov*); or Kathleen Kahler Fonda, Senior Legal Advisor, Office of Patent Legal Administration (telephone at 571–272–7754, email at *kathleen.fonda@uspto.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

The COVID–19 outbreak is a global crisis in urgent need of creative solutions. The American patent system has long facilitated creative solutions to important challenges by securing exclusive rights for inventors and disseminating technical information to the public to promote follow-on innovation. To disseminate information about inventions designed to combat COVID–19 on a more expedited basis while still securing rights for inventors, the USPTO is implementing a deferred-fee provisional patent application pilot program. The intent is to provide a cost-effective way for inventors to disclose their ideas to others quickly, but without losing their right to claim what is described and enabled by their disclosure. This expedited disclosure may allow the public to benefit from the efforts of inventors seeking to address the COVID–19 outbreak sooner than would otherwise be possible. Early public disclosure can facilitate collaborations, partnerships, or joint ventures, and, in turn, spur and expedite the development of critically needed technologies.

II. Description of the Program

The program provides for early disclosure of the technical subject matter of provisional applications. Program participants will submit a technical disclosure as well as a provisional application cover sheet and a certification and request to participate in the program (form PTO/SB/452, titled ''Certification and Request for COVID–19 Provisional Patent Application Program,'' available at *https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012*). The Office will upload the technical disclosure and the form into a searchable public collaborative database and process the technical disclosure and the cover sheet as a filing of a provisional application. In exchange for the disclosure of the technical subject matter, program participants may defer payment of the provisional application filing fee until such time as a nonprovisional application claiming the benefit of the provisional application is filed. The basic filing fee need not be paid at all by those who desire publication of the technical subject matter in the collaborative database but do not make a benefit or priority claim in a corresponding later-filed application.

The statutory basis for provisional patent applications is 35 U.S.C. 111(b). In order to be entitled to a filing date, a provisional application must include a specification in accordance with 35 U.S.C. 112; see 37 CFR 1.53(c). Claims may also be included but are not required. Under 35 U.S.C. 111(b)(3), a fee is also required for a provisional application. Currently, the undiscounted fee is $280; applicants who qualify for small entity status pay $140, and those who qualify for micro entity status pay $70. See 37 CFR 1.16(d). Although payment of the fee is a statutory requirement, 35 U.S.C. 111(b)(3) authorizes the Director of the USPTO to permit payment after the filing date of the application. The filing requirements for provisional applications are discussed in MPEP 601.01(b).

A later-filed international, foreign or domestic nonprovisional application may be entitled to claim benefit or priority of the filing date of a provisional application. Domestic benefit under 35 U.S.C. 119(e)(1) and 37 CFR 1.78 requires that the provisional application be entitled to a filing date, and name the inventor or a joint inventor also named in the later-filed nonprovisional application. Furthermore, the basic filing fee set forth in 37 CFR 1.16(d) must be paid in order to rely on the provisional application in a later-filed nonprovisional application, although there is no requirement that the basic filing fee be paid in order for the technical subject matter to be posted in the program's collaborative database. See 37 CFR 1.78(a)(2). For more information about claiming the right of priority in an international application under the Patent Cooperation Treaty, see MPEP 1828. Regardless, the later-filed nonprovisional, international or foreign application should be filed not later than 12 months after the date on which the provisional application was filed if a benefit or priority claim to the provisional application is to be made.

Fee Deferral Under the Program

Under the program, payment of the basic filing fee for a provisional application may be deferred past the date on which the provisional application is filed, without imposition of a surcharge, provided that the fee is paid not later than the date on which a nonprovisional application that claims benefit or priority of the provisional application is filed. If the provisional application basic filing fee was not paid, a reminder will be sent 10 months after the provisional application filing date indicating that the basic filing fee must be paid not later than 12 months after the provisional application filing date, and in any case, the fee must be paid in order for an applicant to claim the benefit of the filing date of the provisional application in a nonprovisional application.[1]

Certification of Eligibility for the Program

Consistent with the goal of encouraging information-sharing regarding inventions related to COVID–19, participation in the program requires a certification that the subject matter disclosed in the provisional patent application concerns a product or process related to COVID–19. The product or process must be subject to an applicable FDA approval for COVID–19 use. Such approvals may include, but are not limited to, an Investigational New Drug (IND) application, an Investigational Device Exemption (IDE), a New Drug Application (NDA), a Biologics License Application (BLA), a Premarket Approval (PMA), or an Emergency Use Authorization (EUA). Information on INDs, IDEs, NDAs, BLAs, PMAs, and EUAs may be obtained at *www.fda.gov.*

The subject matter requirement for participation in the program is the same as that for participation in the COVID–19 Prioritized Examination Pilot Program announced on May 8, 2020 (85 FR 28932). The requirement is broadly drafted to include any sort of FDA premarket regulatory review procedure.

[1] Ordinarily, when the basic filing fee is not paid upon filing, the Office notifies the applicant that it must be paid within an extendable two-month time period from the date of the notice, and imposes a surcharge in accordance with 37 CFR 1.16(g). See MPEP 601.01(b). However, no notice requiring a basic filing fee or surcharge will be sent in an application submitted under the program.

An applicant need not have obtained or sought FDA approval prior to requesting to participate in either the program or the prioritized examination pilot. However, the product or process disclosed in the application must require premarket regulatory review by the FDA prior to commercial marketing or use.

III. Prior Art Considerations

An inventor's technical disclosure published in the collaboration database cannot be used against the inventor's own corresponding later-filed nonprovisional application in the United States, provided that the later-filed application is filed within one year of the public disclosure. Regardless, applicant should consider filing a nonprovisional application making a proper benefit claim under 35 U.S.C. 119(e) and 37 CFR 1.78(a) no more than one year after filing of the provisional application. Special care should be taken where foreign patent protection is desired. Many foreign jurisdictions treat an inventor's public disclosure made within one year of filing as prior art against the inventor's own application unless that earlier disclosure is the subject of a proper priority claim in that jurisdiction. For this reason, applicants should be aware of the prior art implications of their submissions. Making a submission under the program will result in a public disclosure of the technical subject matter via the Office's searchable collaboration database. Thus, such a public disclosure may be citable as prior art under 35 U.S.C. 102(a)(1) as of the date it publishes. In addition, the complete provisional patent application submitted under the program may become prior art under 35 U.S.C. 102(a)(2) as of the filing date, but only if there has been a proper benefit claim under 35 U.S.C. 119(e) in a later-filed nonprovisional application or international application and the later-filed application has been published or deemed published under 35 U.S.C. 122(b) or has issued as a U.S. patent.

It is important to note, for the purpose of understanding prior art implications, that the Office does not consider adding the technical subject matter disclosed in submissions to the Office's collaboration database under the program to constitute publication of the provisional application under 35 U.S.C. 122(b).[2] Rather, by way of submission of form PTO/SB/452 and in accordance with the confidentiality waiver provision of 35 U.S.C. 122(a), the program participant specifically authorizes the database to publish the technical subject matter disclosed as well as any contact information the participant wishes to include. The database will also publish the name of the inventor or the first named joint inventor, the provisional application filing date, and the date the submission was placed in the database. However, the database will not publish the cover sheet, which is a requirement for a provisional application. Furthermore, the basic filing fee need not have been paid at the time of publication in the database. For these reasons, the disclosure in the database is not a complete provisional patent application under 35 U.S.C. 111(b).

IV. Requirements To Participate in the Program

(1) The certification and request for participation in the program must be by way of a completed form PTO/SB/452, titled ''Certification and Request for COVID–19 Provisional Patent Application Program.'' Form PTO/SB/452 is available at *https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012.* The form must be submitted with a specification upon filing of the application. Form PTO/SB/452 cannot be used to request that a provisional application that had previously received a filing date be included in the program; such a request will be denied. Form PTO/SB/452 contains the necessary certification regarding the need for the product or process disclosed to obtain FDA approval prior to marketing for a COVID–19 use, as well as a statement authorizing publication of the technical subject matter of the program submission. It includes a field for the name of the sole inventor or the first joint inventor. (Program participants should note, as discussed below, that the provisional application cover sheet required by 37 CFR 1.51(c)(1), and not form PTO/SB/452, will be used to establish the inventorship of the provisional application.) Form PTO/SB/452 also allows the program participant to provide any desired contact information to be included in the database. Form PTO/SB/452 must be signed in compliance with 37 CFR 1.33(b). This requires that the form be signed by: (1) A patent practitioner of record; (2) a patent practitioner not of record who acts in a representative capacity under the provisions of 37 CFR 1.34; or (3) the applicant (37 CFR 1.42), if the applicant is not a juristic entity. If the applicant is the inventor (as defined in 35 U.S.C. 100(f)), and the inventor is not represented by a patent practitioner, then all individuals who constitute the inventive entity must sign; limited exceptions are provided in 35 U.S.C. 117. Use of form PTO/SB/452 will enable the USPTO to identify the provisional application as a program submission and to process the certification and request in a timely manner.

The program is reserved for provisional patent applications filed under 35 U.S.C. 111(b). No nonprovisional patent application or international application designating the United States is eligible for participation.

(2) The program submission must be in the English language.

(3) The program submission must include the provisional application cover sheet required by 37 CFR 1.51(c)(1). In accordance with 37 CFR 1.51(c)(1)(ii), this cover sheet will be used to establish the inventorship of the provisional application. Although form PTO/SB/452 provides a field to indicate the first named inventor for inclusion in the searchable online database, the entry in that field will not override the inventorship established in the required cover sheet. If the applicant is a juristic entity, the applicant must be identified on an application data sheet (ADS) included with the program submission; in that circumstance, form PTO/SB/452 must be signed by a registered practitioner. See 36 CFR 1.46(b). The ADS may serve as the required cover sheet. See 37 CFR 1.53(c)(1) and MPEP 601.01(b).

(4) The provisional application specification including any drawings, claims and/or abstract, cover sheet (which may be an ADS), and form PTO/SB/452 must be filed electronically via Patent Center. The specification must be filed in DOCX format to facilitate making the material text searchable. Requests for assistance with electronic filing should be directed to the Patent Electronic Business Center at *EBC@uspto.gov.*

(5) In order for the technical subject matter of a program submission to be posted in the Office's collaboration database, the submission must meet the requirements for a provisional application as indicated in 35 U.S.C. 111(b)(1) and 37 CFR 1.53(c), with the exception that payment of the basic filing fee may be deferred until the filing of a nonprovisional application that is entitled to claim benefit of the provisional application. However, there is no requirement that an applicant must file a later application that claims benefit or priority of a provisional application filed under the program.

[2] Provisional applications are generally maintained in confidence and not published under 35 U.S.C. 122(b). See 35 U.S.C. 122(b)(2)(A)(iii).

V. Internal Processing of the Certification and Request Under the Program

(1) A provisional patent application number will be assigned to an application filed by a program participant in accordance with 37 CFR 1.53(a).

(2) A program submission that includes a legible specification in DOCX format, with or without claims, will be given a provisional application filing date under 37 CFR 1.53(c). The program participant will be notified of the filing date.

A submission that fails to include a legible specification in DOCX format will not be treated as a program submission, even if it is accompanied by form PTO/SB/452. The submission will be handled as a provisional application, and a notice will be sent pursuant to 37 CFR 1.53(g), including a requirement for payment of the basic filing fee ordinarily within two months of the date of the notice. See MPEP 601.01(b).

(3) If a program submission is otherwise complete but does not include a cover sheet as required for a provisional application by 37 CFR 1.51(c)(1), or any necessary application size fee as required by 37 CFR 1.51(c)(4), the applicant will be notified and given an extendable two-month time period from the date of the notice to submit the missing items in accordance with 37 CFR 1.53(g). However, the applicant may continue to defer payment of the basic filing fee until a nonprovisional application claiming benefit of the provisional application is filed. Even if the notice sets a due date for the basic filing fee that is earlier than 12 months after the date the provisional application was filed, the fee will be considered timely if paid not later than the date on which a nonprovisional application that is entitled to claim benefit of the provisional application is filed. A reply to an Office notice that purports to require payment of the basic filing fee earlier than 12 months after the date the provisional application was filed will be considered complete, as to the fee payment issue, if it refers to this **Federal Register** notice as the basis for deferring payment or includes a copy of this notice. Failure to draw the Office's attention to this **Federal Register** notice will result in the application being processed as if the fee were due in response to the Office notice, and substantial processing delays may occur.

(4) When all the requirements for a provisional application have been met, with the exception that the basic filing fee set forth in 37 CFR 1.16(d) can be deferred, the specification and form PTO/SB/452 will be placed in a text-searchable online collaboration database that is available to the public and maintained by the Office. The collaboration database will also include the first named inventor, any contact information provided on form PTO/SB/452, the provisional application filing date, and the date the information is posted in the database. The cover sheet, as required for a provisional application by 37 CFR 1.51(c)(1), will not be posted in the database. The Office will notify the program participant of the posting date of the information.

(5) If the basic filing fee set forth in 37 CFR 1.16(d) has not been paid by 10 months after the provisional application filing date, the Office will notify the applicant that the fee must be paid not later than 12 months after the provisional application filing date, and in any case, the fee is required in order to claim 35 U.S.C. 119(e) benefit of the provisional application in a corresponding nonprovisional application.

The mere absence of the basic filing fee, without any other defects in the submission, will not trigger a notification regarding payment earlier than the 10-month notice. If, however, the Office inadvertently sends such a notice requiring payment of the basic filing fee prior to the date a corresponding nonprovisional application is filed, a participant may respond by drawing attention to this **Federal Register** notice. Deferring payment until filing of a corresponding nonprovisional application is permitted under the program, even if a notice setting an earlier payment date is inadvertently sent.

VI. Actions Resulting in Termination From the Program

There is no provision for withdrawal from the program. Once the technical subject matter of a program submission is made available to the public in the searchable collaboration database on the USPTO's website, that public availability cannot be revoked. This is in keeping with the goal of providing a publicly available repository of information relevant to technologies that may help to combat the COVID–19 pandemic. However, there is no requirement that an applicant must file a later application that claims benefit or priority of a provisional application filed under the program.

Andrei Iancu,

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

[FR Doc. 2020–20443 Filed 9–16–20; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the new 12-month cap on duty- and quota-free benefits.

DATES: The new limitations become effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Rebecca Geiger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3117.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Public Law 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Public Law 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Public Law 109–432, and section 1 of The African Growth and Opportunity Amendments (Pub. L. 112–163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and Title I, Section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, Public Law 114–27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more

beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114–27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2020 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2020, and extending through September 30, 2021, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,856,390,368 square meters equivalent. Of this amount, 928,195,184 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs. These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Lloyd Wood,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2020–20405 Filed 9–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0152]

Agency Information Collection Activities; Comment Request; Third Party Servicer Data Collection

AGENCY: Federal Student Aid, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before November 16, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0152. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Third Party Servicer Data Collection.

OMB Control Number: 1845–0130.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 107.

Total Estimated Number of Annual Burden Hours: 56.

Abstract: The Department of Education (the Department) is seeking a revision of the OMB approval of a Third Party Servicer Data Form. This form collects information from third party servicers. This form is used to validate the information reported to the Department by higher education institutions about the third-party servicers that administer one or more aspects of the administration of the Title IV, HEA programs on an institution's behalf. This form also collects additional information required for effective oversight of these entities. There has been no change to the supporting regulatory language. We have reevaluated the usage of the form and there is a resulting decrease in the number of respondents and burden hours.

Dated: September 14, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–20525 Filed 9–16–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0149]

Agency Information Collection Activities; Comment Request; Title IV Part A Waiver Request

AGENCY: Office of Elementary and Secondary Education, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: Emergency approval by the OMB has been requested by September 30, 2020, therefore, the Department requests that comments are submitted by September 29, 2020. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before November 16, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0149. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Bryan Williams, 202–453–6715.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: The Student Support and Academic Enrichment Grant Program (Title IV, Part A) Waiver Request.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 156.

Abstract: The Student Support and Academic Enrichment Grant Program (Title IV, Part A) grant program intends to offer waivers, for the 2020–2021 school year only, to State educational agencies (SEAs), based on section 8401 [20 U.S.C.7861] of the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (ESSA) in 2015, for specific requirements in the program. The purpose for this new collection is to collect waiver requests from each State wishing to take advantage of these waivers.

Additional Information: An emergency clearance approval for the use of the system is described below due to the following conditions: The U.S. Department of Education (ED) has determined that this information must be collected as close to the beginning of school year 2020–2021 as possible to provide flexibility to State educational agencies (SEAs) to help them address the unprecedented obstacles posed by the novel Coronavirus disease 2019 (COVID–19) that schools, teachers, students, and their families are facing as the 2020–2021 school year begins.

Dated: September 14, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–20524 Filed 9–16–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 22, 2020; 12:30 p.m.–4:30 p.m.

Friday, October 23, 2020; 12:30 p.m.–4:30 p.m.

ADDRESSES: This meeting will be held digitally via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the BERAC meeting website at: *https://science.osti.gov/ber/berac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Tristram West, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Phone (301) 903–5155; fax (301) 903–5051 or email: *tristram.west@science.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- News from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Earth and Environmental Systems Sciences Divisions
- Report brief(s)
- BERAC business and discussion

- Public comment

Public Participation: The two-day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, please send an email request to both Tristram West (*tristram.west@science.doe.gov)* and Andrew Flatness (*andrew.flatness@science.doe.gov*). You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will be limited to five minutes each.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC website: *https://science.osti.gov/ber/berac/Meetings/BERAC-Minutes.*

Signed in Washington, DC on September 11, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–20503 Filed 9–16–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act requires that public notice of this conference call be announced in the **Federal Register**.

DATES: Tuesday, September 29, 2020; 2:00 p.m.–4:30 p.m. EDT.

ADDRESSES: This meeting will be held virtually via WebEx. To attend, please contact Alyssa Harris by email, *Alyssa.Harris@em.doe.gov,* no later than 5:00 p.m. EDT on Tuesday, September 22, 2020.

To Submit Public Comment: Public comments will be accepted via email prior to and after the meeting. Comments received no later than 5:00 p.m. EDT on Tuesday, September 22, 2020, will be read aloud during the virtual meeting. Comments will also be accepted after the meeting by no later than 5:00 p.m. EDT on Friday, October 2, 2020. Please send comments to Alyssa Harris at *Alyssa.Harris@em.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Alyssa Harris, EMAB Federal Coordinator. U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Phone: (202) 430–9624 or Email: *Alyssa.Harris@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with independent advice and recommendations on corporate issues confronting the EM program. EMAB's membership reflects a diversity of views, demographics, expertise, and professional and academic experience. Individuals are appointed by the Secretary of Energy to serve as either special Government employees or representatives of specific interests and/or entities.

Tentative Agenda:

- EMAB Subcommittee Presentations
  - Dispute Resolution Subcommittee
  - Risk Based Decision Making Subcommittee
  - RCRA/CERCLA Streamlining Subcommittee
  - Performance Metrics Subcommittee
- Board Business

Public Participation: The online virtual meeting is open to the public. Written statements may be filed with the Board either before or after the meeting by sending them to Alyssa Harris at the aforementioned email address. The Designated Federal Officer is empowered to conduct the conference call in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments should email them as directed above.

Minutes: Minutes will be available by writing or calling Alyssa Harris at the address or phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/em/listings/emab-meetings.*

Signed in Washington, DC, on September 11, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–20501 Filed 9–16–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford; Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, October 7, 2020; 9:00 a.m.–4:00 p.m.
Thursday, October 8, 2020; 9:00 a.m.–4:00 p.m.

ADDRESSES: Online Virtual Meeting. To receive the meeting access information and call-in number, please contact the Federal Coordinator, JoLynn Garcia, at the telephone number or email listed below.

FOR FURTHER INFORMATION CONTACT: JoLynn Garcia, Federal Coordinator, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352; Phone: (509) 376–6244; or Email: *jolynn.garcia@rl.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Potential Draft Hanford Advisory Board Advice
  - Consider Draft Advice on B Plant
- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Hanford Advisory Board Committee Reports
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact JoLynn Garcia at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact JoLynn Garcia. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals

wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling JoLynn Garcia's office at the address or telephone number listed above. Minutes will also be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on September 11, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–20502 Filed 9–16–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1183–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Oct–Dec 2020) to be effective 10/1/2020.
Filed Date: 9/10/20.
Accession Number: 20200910–5153.
Comments Due: 5 p.m. ET 9/22/20.

Docket Numbers: RP20–1184–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Update Summary of Non-Conforming Agreements—2020 to be effective 11/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5040.
Comments Due: 5 p.m. ET 9/23/20.

Docket Numbers: RP20–1185–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 091120 Negotiated Rates—Consolidated Edison Energy, Inc. R–2275–14 to be effective 11/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5054.
Comments Due: 5 p.m. ET 9/23/20.

Docket Numbers: RP20–1186–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 091120 Negotiated Rates—Shell Energy North America (US), L.P. R–2170–19 to be effective 11/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5057.
Comments Due: 5 p.m. ET 9/23/20.

Docket Numbers: RP20–1187–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 091120 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–19 to be effective 11/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5058.
Comments Due: 5 p.m. ET 9/23/20.

Docket Numbers: RP20–1188–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 091120 Negotiated Rates—Uniper Global Commodities North America LLC R–7650–03 to be effective 11/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5059.
Comments Due: 5 p.m. ET 9/23/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–20532 Filed 9–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–100–000.
Applicants: Tilton Energy LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Tilton Energy LLC.
Filed Date: 9/11/20.
Accession Number: 20200911–5207.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: EC20–101–000.
Applicants: Chief Conemaugh Power, LLC, Chief Keystone Power, LLC, Riverstone Holdings LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Chief Conemaugh Power, LLC, et al.
Filed Date: 9/11/20.
Accession Number: 20200911–5213.
Comments Due: 5 p.m. ET 10/2/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–242–000.
Applicants: Weaver Wind Maine Master Tenant, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Weaver Wind Maine Master Tenant, LLC.
Filed Date: 9/10/20.
Accession Number: 20200910–5152.
Comments Due: 5 p.m. ET 10/1/20.

Docket Numbers: EG20–243–000.
Applicants: Weaver Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Weaver Wind, LLC.
Filed Date: 9/10/20.
Accession Number: 20200910–5156.
Comments Due: 5 p.m. ET 10/1/20.

Docket Numbers: EG20–244–000.
Applicants: Harts Mill Solar, LLC.
Description: Notice of Self-Certification as Exempt Wholesale Generator of Harts Mill Solar, LLC.
Filed Date: 9/11/20.
Accession Number: 20200911–5045.
Comments Due: 5 p.m. ET 10/2/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1428–004.
Applicants: Tilton Energy LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the MISO OATT to be effective N/A.
Filed Date: 9/11/20.
Accession Number: 20200911–5244.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–1657–001.
Applicants: Mechanicsville Solar, LLC.
Description: Notice of Change in Status of Mechanicsville Solar, LLC.
Filed Date: 9/9/20.
Accession Number: 20200909–5197.
Comments Due: 5 p.m. ET 9/30/20.

Docket Numbers: ER20–2622–001.
Applicants: Wilmot Energy Center, LLC.
Description: Tariff Amendment: Wilmot Energy Center, LLC Amendment to MBR Application to be effective 10/5/2020.

Filed Date: 9/10/20.
Accession Number: 20200910–5183.
Comments Due: 5 p.m. ET 10/1/20.

Docket Numbers: ER20–2715–001.
Applicants: Stored Solar, LLC.
Description: Tariff Amendment: Amendment to 1 to be effective 8/24/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5270.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2858–000.
Applicants: FPL Energy Burleigh County Wind, LLC.
Description: Tariff Cancellation: FPL Energy Burleigh County Wind, LLC, Notice of Cancellation of MBR Tariff to be effective 9/11/2020.
Filed Date: 9/10/20.
Accession Number: 20200910–5206.
Comments Due: 5 p.m. ET 10/1/20.

Docket Numbers: ER20–2859–000.
Applicants: FPL Energy Oklahoma Wind, LLC.
Description: Tariff Cancellation: FPL Energy Oklahoma Wind, LLC Notice of Cancellation of MBR Tariff to be effective 9/11/2020.
Filed Date: 9/10/20.
Accession Number: 20200910–5210.
Comments Due: 5 p.m. ET 10/1/20.

Docket Numbers: ER20–2860–000.
Applicants: FPL Energy Sooner Wind, LLC.
Description: Tariff Cancellation: FPL Energy Sooner Wind, LLC Notice of Cancellation of MBR Tariff to be effective 9/11/2020.
Filed Date: 9/10/20.
Accession Number: 20200910–5211.
Comments Due: 5 p.m. ET 10/1/20.

Docket Numbers: ER20–2861–000.
Applicants: Southern California Edison Company.
Description: Petition for Waiver of Tariff Provisions, et al. of Southern California Edison Company.
Filed Date: 9/10/20.
Accession Number: 20200910–5240.
Comments Due: 5 p.m. ET 9/21/20.

Docket Numbers: ER20–2862–000.
Applicants: HDSI, LLC.
Description: Baseline eTariff Filing: Certificate of Concurrence for Co-Tenancy and Shared Facilities Agreement to be effective 11/11/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5037.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2863–000.
Applicants: Florida Power & Light Company.
Description: Compliance filing: FPL & LCEC Amendments to Rate Schedule FERC No. 317 to be effective 12/31/9998.
Filed Date: 9/11/20.
Accession Number: 20200911–5146.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2864–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL & FKEC Amendments to Rate Schedule FERC No. 322 to be effective 12/31/9998.
Filed Date: 9/11/20.
Accession Number: 20200911–5160.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2865–000.
Applicants: 64NB 8me LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 10/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5166.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2866–000.
Applicants: 91MC 8me, LLC.
Description: Baseline eTariff Filing: Application For Market-Based Rate Authority to be effective 10/1/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5175.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2867–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2020–09–11_PSC–CSU-NonConf SISA–605–0.0.0-Filing to be effective 9/12/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5176.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2868–000.
Applicants: UNS Electric, Inc.
Description: § 205(d) Rate Filing: Round Valley Interconnection Agreement (R.S. 8) to be effective 11/11/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5181.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2869–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Improvements to Reconstitution of Passive Demand Resource in Gross Load Forecast to be effective 11/10/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5197.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2870–000.
Applicants: Midcontinent Independent System Operator, Inc, Duke Energy Indiana, LLC.
Description: § 205(d) Rate Filing: 2020–09–11_SA 1391 Duke-Vectren 5th Rev IA to be effective 11/11/2020.
Filed Date: 9/11/20.
Accession Number: 20200911–5229.
Comments Due: 5 p.m. ET 10/2/20.

Docket Numbers: ER20–2871–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Rate Schedule FERC No. 312 between Tri-State and EEA to be effective 12/31/9998.
Filed Date: 9/11/20.
Accession Number: 20200911–5256.
Comments Due: 5 p.m. ET 10/2/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR20–7–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of The North American Electric Reliability Corporation for Approval of Amendments to the Northeast Power Coordinating Council Regional Standard Processes Manual.
Filed Date: 9/10/20.
Accession Number: 20200910–5264.
Comments Due: 5 p.m. ET 10/1/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–20531 Filed 9–16–20; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

ACTION: Notice of an open meeting of the Board of Directors of the Export-Import Bank of the United States.

DATES: Tuesday, September 29, 2020 at 10:00 a.m. EDT.

PLACE: The meeting will be held via teleconference and audio-only webinar.

STATUS: The meeting will be open to public observation by teleconference only.

PUBLIC PARTICIPATION: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at *https://register.gotowebinar.com/register/4591529081381306894.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Brittany J. Walker, Deputy to the Senior Vice President for External Engagement 202–565–3216.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–20626 Filed 9–15–20; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

DATES: 10:30 a.m. on Tuesday, September 15, 2020.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Brian P. Brooks (Acting Comptroller of the Currency), and concurred in by Director Kathleen L. Kraninger (Director, Consumer Financial Protection Bureau), and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated at Washington, DC, on September 15, 2020.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–20647 Filed 9–15–20; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS20–11]

Submission for OMB Review; Comment Request

AGENCY: Appraisal Subcommittee (ASC), Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The ASC as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995. On June 5, 2020, the ASC requested comment for 60 days on a proposal to renew this information collection. No comments were received. The ASC hereby gives notice of its plan to submit to the Office of Management and Budget (OMB) a request to approve the renewal of this collection and again invites comment on its renewal.

DATES: Written comments must be received on or before October 19, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Lori Schuster, Management and Program Analyst, at (202) 595–7578, Appraisal Subcommittee, 1325 G Street NW, Suite 500, Washington, DC 20005. View the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Collection and Transmission of Annual AMC Registry Fees.

OMB Number: 3139–0008.

Type of Review: Extension of a currently approved collection.

Abstract: States that register and supervise appraisal management companies (AMCs) are required to collect and transmit annual AMC registry fees to the ASC. 12 CFR part 1102, and in particular section 1102.402, established the annual AMC registry fee for States that register and supervise AMCs as follows: (1) In the case of an AMC that has been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State during the previous year; and (2) in the case of an AMC that has not been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State since the AMC commenced doing business. Performance of an appraisal means the appraisal service requested of an appraiser by the AMC was provided to the AMC. Section 1102.403 requires AMC registry fees to be collected and transmitted to the ASC on an annual basis by States that register and supervise AMCs. Only those AMCs whose registry fees have been transmitted to the ASC are eligible to be on the AMC Registry for the 12-month period following the payment of the fee. Section 1102.403 clarified that States may align a one-year period with any 12-month period, which may, or may not, be based on the calendar year. The registration cycle is left to the individual States to determine.

Current Action: There are no changes being made to this regulation.

Affected Public: States, businesses or other for-profit organizations.

Estimated Number of Respondents: 350 AMCs, 51 States. Based on a review of AMC Registry data, there are approximately 309 distinct AMCs listed on the AMC Registry as reported by 30 States. Therefore, we have changed the estimated number of AMCs from 500 to 350 to account for the 21 States that are not currently reporting data to the AMC Registry. Currently 51 States have AMC Programs with 30 States reporting data to the AMC Registry.

Estimated Total Annual Burden Hours: For States—We estimate that a State will spend approximately 60 hours annually submitting data to the ASC.

For AMCs—4,437 hours. This estimate has been increased from 500. As of September 4, 2020, there were 2,608 active AMC entries on the AMC Registry. We estimate that it takes each AMC one hour to report its data to each State in which the AMC is registered. Assuming an average of 87 AMCs per State, this would total 4,437 active AMCs in 51 States.

Frequency of Response: Event generated.

* * * * *

By the Appraisal Subcommittee.

James R. Park,

Executive Director.

[FR Doc. 2020–20457 Filed 9–16–20; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

Service Contract Inventory Analysis; Fiscal Year 2018

AGENCY: Federal Maritime Commission.

ACTION: Notice of release of the Federal Maritime Commission's FY 2018 Service Contract Inventory Analysis.

SUMMARY: The Federal Maritime Commission (Commission) is publishing this notice to advise the public of the availability of its FY 2018 Service Contract Inventory Analysis. The FY 2018 Service Contract Inventory Analysis includes Background, Methodology, Agency Analysis of Contracts, Contract Services and Agency.

DATES: The inventory is available on the Commission's website as of July 16, 2020.

FOR FURTHER INFORMATION CONTACT: Katona Bryan-Wade, Director, Office of Management Services, 202–523–5900, *omsmaritime@fmc.gov.*

SUPPLEMENTARY INFORMATION: Acting in compliance with Sec. 743 of Division C of the Consolidated Appropriations Act 2010, the Federal Maritime Commission (Commission) is publishing this notice to advise the public of the availability of its FY 2018 Service Contract Inventory Analysis. The FY 2018 Service Contract Inventory Analysis includes Background, Methodology, Agency Analysis of Contracts, Contract Services and Agency.

Objectives, and Agency Findings

This analysis was developed in accordance with guidance issued by the Office of Management and Budget (OMB), Office of Procurement Policy (OFPP), and in accordance with FAR subpart 4.17—Service Contracts Inventory. The Federal Maritime Commission has posted its FY 2018 Service Contract Inventory Analysis at the following link: *https://www.fmc.gov/about-the-fmc/governmentwide-laws-regulations/service-contract-analysis/.*

Rachel Dickon,

Secretary.

[FR Doc. 2020–20449 Filed 9–16–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary approval of information collection.

SUMMARY: The Board has temporarily revised the Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341) pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB). The temporary revisions, which would require firms to submit data necessary for the Board to conduct additional analysis in connection with resubmission of firms' capital plans, including consideration of the global market shock (GMS) component, require the reporting of certain additional data as of June 30, 2020.

DATES: Comments must be submitted on or before November 16, 2020.

ADDRESSES: You may submit comments, identified by FR Y–14A, FR Y–14Q, or FR Y–14M, 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 a.m. and 5 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: 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, if approved. These documents will also be made available on the 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 below. 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.

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 Y–14A/Q/M 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 Y–14A/Q/M information collection for three years, with revision.

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.

Final Approval Under OMB Delegated Authority of the Temporary Revision of the Following Information Collection:

Report title: Capital Assessments and Stress Testing Reports.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and covered savings and loan holding companies (SLHCs) [1] with $100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34.[2]

Estimated average hours per response: FR Y–14A: 926 hours; FR Y–14Q: 2,152 hours; FR Y–14M: 1,072 hours; June 30, 2020, submission: 572 hours; Capital plan resubmission: 957 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation, On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 33,336 hours; FR Y–14Q: 309,888 hours; FR Y–14M: 437,376 hours; June 30, 2020, submission: 20,583 hours; Capital plan resubmission: 9,570 hours; FR Y–14 On-going Automation Revisions: 17,280 hours; FR Y–14 Attestation, On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

- The annual [3] FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[4]
- The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading positions, and PPNR for the reporting period.
- The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual CCAR and DFAST exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 17 filings each year: One annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with the information collection is mandatory.

Current actions and proposed revisions: The Board has temporarily revised the FR Y–14A/Q/M reports to implement changes necessary to collect information used to conduct additional analysis in connection with the resubmission of firms' capital plans, including consideration of the GMS component, using data as of June 30, 2020. Specifically, the Board has temporarily revised the FR Y–14A/Q/M reports to collect an additional full or partial FR Y–14A submission that includes stressed largest counterparty default data submitted on FR Y–14A, Schedule A (Summary), as well as additional stressed counterparty data submitted on FR Y–14Q, Schedule L (Counterparty), both as of June 30, 2020. The Board notes that the information associated with the temporary revisions to the FR Y–14A/Q/M reports are not available from other sources, such as the FR Y–9C. The temporary revisions require the submission of data as of June 30, 2020, and all data associated with these temporary revisions are due to the Board 45 calendar days following the publication of the scenarios. In addition,

[1] Covered SLHCs are those which are not substantially engaged in insurance or commercial activities. For more information, see the definition of ''covered savings and loan holding company'' provided in 12 CFR 217.2 and 12 CFR 238.2(ee). SLHCs with $100 billion or more in total consolidated assets become members of the FR Y–14Q and FR Y–14M panels effective June 30, 2020, and the FR Y–14A panel effective December 31, 2020. *See* 84 FR 59032 (November 1, 2019).

[2] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

[3] In certain circumstances, a BHC or IHC may be required to re-submit its capital plan. See 12 CFR 225.8(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[4] On October 10, 2019, the Board issued a final rule that eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. See 84 FR 59032 (Nov. 1, 2019). That final rule maintained the existing FR Y–14A/Q/M substantive reporting requirements for these firms in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of its supervised firms. However, as noted in the final rule, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further change to the FR Y–14A/Q/M forms as part of a separate proposal. See 84 FR 59032, 59063.

all data associated with these temporary revisions must be accompanied by an attestation signed by the chief financial officer or equivalent senior officer. See the FR Y–14A and FR Y–14Q instructions for more information regarding attestations.

The Board has determined that these revisions to the FR Y–14A/Q/M reports must be instituted quickly in order that the Board may conduct additional analysis using data as of June 30, 2020, and that public participation in the approval process would defeat the purpose of the collection of information. Conducting additional analysis with data as of that date will enable the Board to ensure that firms subject to the stress test are adequately capitalized and able to withstand the economic effects of the coronavirus disease (COVID–19).

The Board also proposes to extend the FR Y–14A/Q/M reports for three years, with revisions that would allow the Board to require the submission of this additional FR Y–14A and FR Y–14Q data in connection with a firm's resubmission of its capital plan.

Temporary Revisions to the FR Y–14A/Q/M

On June 25, 2020, the Board notified certain large firms that they would be required to resubmit and update their capital plans later this year and announced [5] that it will conduct additional analysis in connection with that resubmission as economic conditions evolve. The Board has decided to conduct this additional analysis using data as of June 30, 2020. This additional analysis will enable the Board to ensure that firms subject to the stress test are adequately capitalized and able to withstand the economic effects of COVID–19. This additional analysis will include GMS and largest counterparty default (LCPD) components.

Additional FR Y–14A Submission

The Board uses data collected on the FR Y–14A/Q/M reports to conduct its CCAR and DFAST exercises. The FR Y–14Q and FR Y–14M are currently submitted for the June 30, 2020, as-of date. However, the FR Y–14A is currently only submitted for the fourth quarter of a given year. In order for the Board to conduct additional analysis using data as of June 30, 2020, the Board has required firms to submit FR Y–14A data as of June 30, 2020. Specifically, firms subject to Category I–III standards [6] are required to submit the entire FR Y–14A report, while firms subject to Category IV standards [7] are required to submit FR Y–14A, Schedule C (Regulatory Capital Instruments).[8]

Global Market Shock (GMS)

The GMS is a set of hypothetical shocks to a large set of risk factors reflecting general market distress and heightened uncertainty. Firms with significant trading activity must consider the global market shock as part of their supervisory severely adverse scenario, and recognize associated losses in the first quarter of the planning period.[9] In addition, certain large and highly interconnected firms must apply the same GMS to project losses under the counterparty default scenario component. The global market shock is applied to asset positions held by the firms on a given as-of date. These shocks do not represent a forecast of the Federal Reserve.

The design and specification of the global market shock differ from that of the macroeconomic scenarios for several reasons. First, profits and losses from trading and counterparty credit are measured in mark-to-market terms, while revenues and losses from traditional banking are generally measured using the accrual method. Another key difference is the timing of loss recognition. The GMS affects the mark-to-market value of trading positions and counterparty credit losses in the first quarter of the projection horizon. This timing is based on an observation that market dislocations can happen rapidly and unpredictably any time under stress conditions.

Typically, the GMS is applicable only to FR Y–14 data associated with the fourth quarter submission of a given year. However, the Board has required firms subject to the GMS component to submit the stressed data portion of FR Y–14Q, Schedule L (Counterparty), as well as to incorporate the GMS component into their FR Y–14A submissions, for data as of June 30, 2020, so that the Board can conduct additional analysis (*i.e.,* June 30, 2020, is the GMS as-of date). All firms that were subject to the GMS component for the 2020 DFAST and CCAR exercises are also subject to the GMS component for the additional analysis in connection with the resubmission of firms' capital plans.

Largest Counterparty Default (LCPD)

The Board has required certain firms [10] to incorporate a LCPD component in the severely adverse scenario used for the additional analysis that is conducted using data as of June 30, 2020. The LCPD component is intended to assess the potential losses and capital impact associated with the default of each applicable firm's largest counterparty. The Board will include a substantially similar largest counterparty default scenario component in its additional analysis for each firm in the severely adverse scenario.

The counterparty default scenario component will allow the Board and each firm to evaluate whether the firm has sufficient capital to withstand the default of its largest counterparty. The counterparty default scenario component will account for the possibility that a firm experiences counterparty losses from certain activities that are not captured in supervisory macroeconomic scenarios. Generally, firms are subject to the counterparty default scenario component in addition to the GMS.

The counterparty default scenario component must be treated as an add-on to the macroeconomic environment specified in the severely adverse scenario. Any potential losses from the counterparty default scenario component must be assumed to occur

[5] *See https://www.federalreserve.gov/publications/files/2020-sensitivity-analysis-20200625.pdf.*

[6] Category I standards apply to firms that qualify as U.S. GSIBs. Category II standards apply to firms with $700 billion or more in assets, or firms with $75 billion or more in cross-jurisdictional activity and $100 billion or more in assets, that do not qualify as U.S. GSIBs. Category III standards apply to firms with $250 billion or more in assets, or firms with $100 billion or more in assets and at least $75 billion in (1) nonbank assets, (2) weighted short-term wholesale funding, or (3) off-balance sheet exposure, that are not subject to Category I or II standards.

[7] Category IV standards apply to firms with $100 billion or more in total consolidated assets that do not meet the criteria for Categories I, II or III.

[8] The FR Y–14A submission as of June 30, 2020, would include certain revisions to the FR Y–14A, Schedules A.1.c.1 (Standardized RWA) and A.1.d (Capital) that allow eligible firms to incorporate the effects of the tailoring rule, the capital simplifications rule, and the standardized approach for counterparty credit risk (SA–CCR). *See* 84 FR 59230 (November 1, 2019) (tailoring rule); 84 FR 35234 (July 22, 2019) (capital simplifications rule); 85 FR 4362 (January 24, 2020) (SA–CCR). These revisions also include the removal of FR Y–14A, Schedules A.1.c.2 (Advanced RWA) and A.7.c (PPNR Metrics), and were recently adopted by the Board.

[9] Bank of America Corporation, Barclays U.S. LLC, Citigroup Inc., Credit Suisse Holding (USA), DB USA Corporation, The Goldman Sachs Group, Inc., HSBC North America Holdings Inc., JPMorgan Chase & Co., Morgan Stanley, UBS Americas Holdings LLC, and Wells Fargo & Company.

[10] Bank of America Corporation, The Bank of New York Mellon, Barclays U.S. LLC, Citigroup Inc., Credit Suisse Holding (USA), DB USA Corporation, The Goldman Sachs Group, Inc., HSBC North America Holdings Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation, UBS Americas Holdings LLC, and Wells Fargo & Company.

instantaneously and must be included in projected losses for the first quarter of the planning horizon. The largest total net stressed loss amount associated with a single counterparty default must be reported as the loss associated with the counterparty default scenario component.

The counterparty default scenario component for the additional analysis using data as of June 30, 2020, is generally similar to the component provided for the stress test cycle that began on January 1, 2020. It requires each firm to assume an instantaneous and unexpected default of its largest counterparty, where the largest counterparty is identified based on net stressed losses. In selecting its largest counterparty, each firm is required to not consider certain sovereign entities (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States) or qualifying central counterparties (QCCP).[11] For an IHC, affiliates, as defined by 12 CFR 252.71(b), are also excluded from the selection of a firm's largest counterparty. Furthermore, each firm is required to aggregate net stressed losses across securities lending and repurchase agreement (collectively, ''Securities Financing Transactions,'' or ''SFT'' [12]) activities and derivatives for each counterparty.[13]

In selecting the largest counterparty, each firm is required to aggregate net stressed losses across SFT activities and derivatives for each counterparty, taking into account close-out netting agreements in place for the derivatives and SFT activities with each legal entity of that counterparty. For SFT and derivatives transactions where a netting agreement is legally enforceable in the jurisdiction where the counterparty legal entity is located, a firm is authorized to assume close-out netting such that estimated losses reflects the difference between the stressed value of securities or cash transferred to the counterparty legal entity and the stressed value of securities or cash received from the same counterparty legal entity, within each master netting agreement. For SFT activities, each firm is required to include potential losses associated with acting as a principal as well as potential losses that could result from transactions where each firm is acting as an agent but provides borrower-default indemnification in the event of a counterparty default.

In estimating net stressed losses of a counterparty, each firm is required to revalue its exposures and collateral (securities or cash) using the hypothetical GMS scenario. Certain large and highly interconnected firms not subject to the GMS component must also apply the same global market shock to project losses under the counterparty default scenario component. Each firm must apply the global market shock to stress the current exposure, collateral, and value of derivatives-related transactions. Each firm must assume a recovery rate that the firm views as appropriate, based on its own internal analysis, for purposes of the counterparty default scenario component in the severely adverse scenario used in its additional analysis. A firm should not assume any additional recovery in subsequent quarters of the planning horizon. Reinvestment of collateral should be included to the extent that the reinvested collateral is part of another SFT agreement.

The total net stressed losses should be calculated as follows: First, firms should compute the total stressed net current exposure (''Total Stressed Net CE''), as defined in the instructions for FR Y–14Q, Schedule L (Counterparty). ''Total Stressed Net CE'' represents the stressed current exposures to a counterparty after applying the GMS to any derivatives and SFT assets (securities/collateral) exchanged under repo-style transactions, as defined in section 2 of 12 CFR part 217, associated with the counterparty after taking all applicable netting agreements into account. Next, firms should subtract the notional amount of any single-name Credit Default Swap (''CDS'') hedges.[14] Exclude from the trading book stress results the mark-to-market gain related to these single-name CDS hedges. Then, firms should multiply the result by one minus the recovery rate. Finally, firms should subtract the stressed Credit Value Adjustment (''CVA'') attributed to the counterparty.[15]

The LCPD component is generally only applicable to FR Y–14 data associated with the fourth quarter submission of a given year. However, in order to be able to conduct additional analysis, the Board has required firms subject to the LCPD component to incorporate the LCPD component into their FR Y–14A submissions for data as of June 30, 2020 (*i.e.,* June 30, 2020, is the LCPD as-of date). To maintain continuity, all firms that were subject to the LCPD component for the 2020 DFAST and CCAR exercises are also subject to the LCPD component for the additional analysis in connection with the resubmission of firms' capital plans.

Proposed Revisions to the FR Y–14A/Q/M

In the event the Board needs to conduct additional analysis in connection with the resubmission of a firm's capital plan in the future, the Board would need certain data. Therefore, the Board proposes to revise the FR Y–14A instructions to indicate that the Board may require submission of the full or partial FR Y–14A report, including stressed data associated with LCPD, in connection with the resubmission of a firm's capital plan. The Board also proposes to revise the FR Y–14Q instructions to indicate that the Board may require submission of stressed FR Y–14Q, Schedule L (Counterparty) data in connection with the resubmission of a firm's capital plan.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y–14A/Q/M reports pursuant to section 5(c) of the Bank Holding Company Act (''BHC Act''), (12 U.S.C. 1844(c)), and pursuant to section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5365(i)) as amended by section 401(a) and (e) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[16] The Board has authority to require SLHCs to file the FR Y–14A/Q/M reports pursuant to section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), as amended by section 369(8) and 604(h)(2) of the Dodd-Frank Act. Lastly, the Board has authority to require U.S. IHCs of FBOs to file the FR Y–14A/Q/M reports pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12

[11] Any state-owned enterprise backed by the full faith and credit of an excluded sovereign entity should also be excluded. See definition of QCCP at 12 CFR 217.2.

[12] SFT activities subject to the counterparty default scenario component include repurchase agreements, reverse repurchase agreements, securities lending, and securities borrowing.

[13] All exposures within a consolidated organization, including to any subsidiaries and related companies, will be treated as exposures to a single counterparty. However, losses should first be computed at the subsidiary or related company level, accounting for legal netting agreements at that level, and then aggregated to the consolidated organization.

[14] When reporting gains associated with CVA hedges on Trading Schedule A.4 of the FR Y–l4A for all counterparties, firm s are instructed to exclude gains from name-specific credit default swaps associated with the counterparty default scenario component.

[15] This is to reflect the fact that stressed CVA loss and baseline CVA are already incorporated in the FR Y–14A Summary Schedule and the firm's balance sheet, respectively.

[16] Public Law 115–174, Title IV 401(a) and (e), 132 Stat. 1296, 1356–59 (2018).

U.S.C. 5311(a)(1) and 5365).[17] In addition, section 401(g) of EGRRCPA (12 U.S.C. 5365 note) provides that the Board has the authority to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more, and clarifies that nothing in section 401 ''shall be construed to affect the legal effect of the final rule of the Board . . . entitled 'Enhanced Prudential Standard for [BHCs] and Foreign Banking Organizations' (79 FR 17240 (March 27, 2014)), as applied to foreign banking organizations with total consolidated assets equal to or greater than $100 million.'' [18] The FR Y–14A/Q/M reports are mandatory. The information collected in the FR Y–14A/Q/M reports is collected as part of the Board's supervisory process, and therefore, such information is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, confidential commercial or financial information, which a submitter actually and customarily treats as private, and which has been provided pursuant to an express assurance of confidentiality by the Board, is considered exempt from disclosure under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)).[19]

Consultation outside the agency: There has been no consultation outside the agency.

Board of Governors of the Federal Reserve System, September 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–20547 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

[17] Section 165(b)(2) of the Dodd-Frank Act (12 U.S.C. 5365(b)(2)) refers to ''foreign-based bank holding company.'' Section 102(a)(1) of the Dodd-Frank Act (12 U.S.C. 5311(a)(1)) defines ''bank holding company'' for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)). The Board has required, pursuant to section 165(b)(1)(B)(iv) of the Dodd-Frank Act (12 U.S.C. 5365(b)(1)(B)(iv)) certain foreign banking organizations subject to section 165 of the Dodd-Frank Act to form U.S. intermediate holding companies. Accordingly, the parent foreign-based organization of a U.S. IHC is treated as a BHC for purposes of the BHC Act and section 165 of the Dodd-Frank Act. Because Section 5(c) of the BHC Act authorizes the Board to require reports from subsidiaries of BHCs, section 5(c) provides additional authority to require U.S. IHCs to report the information contained in the FR Y–14A/Q/M reports.

[18] The Board's Final Rule referenced in section 401(g) of EGRRCPA specifically stated that the Board would require IHCs to file the FR Y–14A/Q/M reports. *See* 79 FR 17240, 17304 (March 27, 2014).

[19] Please note that the Board publishes a summary of the results of the Board's CCAR testing pursuant to 12 CFR 225.8(f)(2)(v), and publishes a summary of the results of the Board's DFAST stress testing pursuant to 12 CFR 252.46(b) and 12 CFR 238.134, which includes aggregate data. In addition, under the Board's regulations, covered companies must also publicly disclose a summary of the results of the Board's DFAST stress testing. *See* 12 CFR 252.58; 12 CFR 238.146. The public disclosure requirement contained in 12 CFR 252.58 for covered BHCs and covered IHCs is separately accounted for by the Board in the Paperwork Reduction Act clearance for FR YY (OMB No. 7100–0350) and the public disclosure requirement for covered SLHCs is separately accounted for in by the Board in the Paperwork Reduction Act clearance for FR LL (OMB No. 7100–0380).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H–6; OMB No. 7100–0278).

DATES: Comments must be submitted on or before November 16, 2020.

ADDRESSES: You may submit comments, identified by FR H–6, 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: 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, if approved. These documents will also be made available on the 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 below.

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.

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.

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.

Proposal under OMB Delegated Authority to Extend for Three Years, With Revision, the Following Information Collection:

Report title: Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

Agency form number: FR H–6.

OMB control number: 7100–0278.

Frequency: Event-generated.

Respondents: State member banks.

Estimated number of respondents: Post Notification, 132; and Application (Prior Approval), 74.

Estimated average hours per response: Post Notification, 2; and Application (Prior Approval), 5.

Estimated annual burden hours: Post Notification, 264; and Application (Prior Approval), 370.

General description of report: Regulation H requires state member banks planning to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) If the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; and (2) if the investment does require prior Board approval, a request for approval must be sent to the appropriate Federal Reserve Bank.

Proposed revisions: The Board proposes to revise the FR H–6 by removing the notification requirement to submit the request for extension of the divestiture period when the bank cannot divest within the established time limit. This requirement has been listed on the form and in the supporting statement for a number of years, but is not contained in the regulations.

Legal authorization and confidentiality: Section 9(23) of the Federal Reserve Act authorizes the Board to prescribe regulations with regard to state member banks making investments primarily devoted to public welfare endeavors.[1] The obligation to respond is mandatory.

Individual respondents may request that information submitted to the Board through the FR H–6 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. Information collected through the FR H–6 may be kept confidential under exemption 4 for the Freedom of Information Act (FOIA), which protects privileged or confidential commercial or financial information.[2] Additionally, to the extent the FR H–6 contains information used in examination reports, it may be withheld from disclosure under FOIA Exemption 8, which protects information ''related to examination, operating, or condition reports.'' [3]

Board of Governors of the Federal Reserve System, September 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–20508 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 338a. The Board also has the authority to require reports from state member banks (12 U.S.C. 248(a) and 324).

[2] 5 U.S.C. 552(b)(4).

[3] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Board Public website Usability Surveys (FR 3076; OMB No. 7100–0366).

DATES: Comments must be submitted on or before November 16, 2020.

ADDRESSES: You may submit comments, identified by FR 3076, 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: 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, if approved. These documents will also be made available on the 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 below.

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.

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.

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.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection:

Report title: Board Public website Usability Surveys.

Agency form number: FR 3076.

OMB control number: 7100–0366.

Frequency: As needed.

Respondents: Individual users and potential users of the Board's public website.

Estimated number of respondents: Surveys: 100; focus groups: 20.

Estimated average hours per response: Surveys: 0.25; focus groups: 1.5.

Estimated annual burden hours: Surveys: 300; focus groups: 120; total: 420.

General description of report: The FR 3076 is used to gather qualitative and quantitative information directly from users or potential users of the Board's website such as the Congress, other government agencies, the public, economic educators, economists, financial institutions, financial literacy groups, and community development groups and more. Participation is voluntary.

The FR 3076 may seek information from users or potential users of various Board web pages, including press releases, data releases and downloads, reports, supervision manuals, brochures, new web pages, audio, video, and use of social media. Information gathered may also include general input on users' interests and needs, feedback on website navigation and layout, distribution channels, or other factors which may affect the ability of users to locate and access content online.

Qualitative collections conducted using the FR 3076 include data gathering methods such as focus groups and individual interviews. Quantitative surveys conducted using the FR 3076 include surveys conducted online or via mobile device, telephone, mail, emails, or a combination of these methods. The Board may contract with an outside vendor to conduct focus groups, interviews, or surveys, or the Board may collect the data directly.

Legal authorization and confidentiality: The Board uses its website and social media to communicate important information to the public about a variety of different issues. The Board is required to provide certain information on its website. For example, under section 2B of the Federal Reserve Act the Board is required to provide certain reports, audits, and other information that ''the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks'' (12 U.S.C. 225b(c)). In addition, the Board uses its website to provide the public with information about a variety of other matters, including information about the Board, its actions, and the economy. The responses to the FR 3076 help the Board determine how to most effectively communicate this information to the public in order to fulfill its statutory responsibilities.

The FR 3076 is voluntary and the information collected by the FR 3076 is not considered to be confidential.

Board of Governors of the Federal Reserve System, September 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–20507 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314). The revisions are effective immediately.

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.

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.

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. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection:

Report title: Market Risk Capital Rule.

Agency form number: FR 4201.

OMB control number: 7100–0314.

Effective Date: The revisions are effective immediately.

Frequency: Annually, quarterly, and on occasion.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), intermediate holding companies (IHCs), and state member banks (SMBs).

Estimated number of respondents: 37.

Estimated average hours per response: Reporting, 1,088; Recordkeeping, 508; Disclosure, 28.

Estimated annual burden hours: Reporting, 1,088; Recordkeeping, 31,744; Disclosure, 2,812.

General description of report: The market risk capital rule, which requires banking organizations to hold capital to cover their exposure to market risk, is an important component of the Board's regulatory capital framework (12 CFR part 217; Regulation Q). The rule includes collections of information that permit the Board to monitor the market risk profile of Board-regulated banking organizations that have significant market risk and evaluate the impact of the market risk rule on those banking organizations.[1] The collections of information provide current statistical data identifying market risk areas on which to focus onsite and offsite examinations. They also allow the Board to assess the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk capital rule. These collections of information ensure capital adequacy of banking organizations according to their level of market risk and assist the Board in implementing and validating the market risk framework. There are no required reporting forms associated with this information collection.

The market risk capital rule applies to any banking organization with aggregate trading assets and trading liabilities equal to (1) 10 percent or more of quarter-end total assets or (2) $1 billion or more.[2] The Board may exclude a banking organization that meets these thresholds if the Board determines that the exclusion is appropriate based on the level of market risk of the banking organization and is consistent with safe and sound banking practices.[3] The Board may further apply the market risk capital rule to any other banking organization if the Board deems it necessary or appropriate because of the level of market risk of the banking organization or to ensure safe and sound banking practices.[4] There are several recordkeeping requirements outlined in the market risk capital rule. Subject banking organizations must adequately document all material aspects of their internal models; the management and valuation of their covered positions; their control, oversight, validation, and review processes and results; and their internal assessments of capital adequacy. Subject banking organizations are also required to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and which trading positions are correlation trading positions. Furthermore, subject banking organizations are required to have clearly defined trading and hedging strategies for trading positions.

In addition, subject banking organizations must conduct and document an analysis of the risk characteristics of each securitization position prior to acquiring the position, considering structural features of the securitization that would materially impact the performance of the position; relevant information regarding the performance of underlying credit exposure(s); relevant market data of the securitization; and, for resecuritization positions, performance information on the underlying securitization exposure. On an ongoing basis (but no less frequently than quarterly), subject banking organizations must evaluate, review, and update as appropriate the analysis required for each securitization position.

In order to comply with the reporting requirements of the market risk capital rule, subject banking organizations must obtain prior written approvals of the Board before (1) using any internal model to calculate risk-based capital requirements under subpart F, (2) including in its capital requirement for *de minimis* exposures, (3) making any material change to the policies and procedures outlined in the recordkeeping requirements, (4) including portfolios of equity positions in its incremental risk model, and (5) using the method specified in Section 217.209(a) to measure comprehensive risk for one or more portfolios of correlation trading positions.

In order to comply with the disclosure requirements of the market risk capital rule, subject banking organizations must provide certain public quantitative disclosures and annual qualitative disclosures.

Legal authorization and confidentiality: The FR 4201 is authorized pursuant to sections 9(6) and 11 of the Federal Reserve Act for SMBs (12 U.S.C. 324 and 248); pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844(c)) and, in some cases, section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for BHCs (12 U.S.C. 5365); pursuant to section 5 of the BHC Act (12 U.S.C. 1844), in conjunction with section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and section 165 of the Dodd-Frank Act for IHCs of foreign banking organizations; and pursuant to sections 10(b)(2) and (g) of the Home Owners' Loan Act for SLHCs (12 U.S.C. 1467a(b)(2) and (g)). The FR 4201 is mandatory.

The information collected pursuant to the FR 4201 is collected as part of the Board's supervisory process, and therefore may be afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 552(b)(4)). Determinations of confidentiality based on exemption 4 of the FOIA would be made on a case-by-case basis.

Current actions: On January 17, 2020, the Board published a notice in the **Federal Register** (85 FR 3049) requesting public comment for 60 days on the extension, with revision, of the Market Risk Capital Rule.

In August 2019, the Board extended the FR 4201 for three years, with revision.[5] The revisions included removing references to provisions in the market risk capital rule concerning securitizations. This revision was in error, as the market risk capital rule contains a recordkeeping requirement concerning securitizations, which is described above. Therefore, the Board proposed to reinstate this recordkeeping requirement. Additionally, the Board proposed to revise the FR 4201 to account for the general recordkeeping requirement in section 217.203(f) of the market risk capital rule, which was not previously accounted for.

The comment period for this notice expired on March 17, 2020. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–20509 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

[1] For purposes of this notice, banking organizations include those listed in respondent section that are subject to the market risk rule.

[2] *See* 12 CFR 217.201(b)(1).

[3] *See* 12 CFR 217.201(b)(3).

[4] *See* 12 CFR 217.201(b)(2).

[5] 84 FR 39843.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Surveys of Consumer and Community Affairs Publications and Resources (FR 1378; OMB No. 7100–0358).

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.

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.

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. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Surveys of Consumer and Community Affairs Publications and Resources.

Agency form number: FR 1378.

OMB control number: 7100–0358.

Frequency: As needed.

Respondents: Individuals, businesses, non-profit institutions, government entities, and other Board stakeholders.

Estimated number of respondents: Consumer surveys, quantitative: 1,000; consumer surveys, qualitative: 50; stakeholder surveys, quantitative: 800; stakeholder surveys, qualitative: 50.

Estimated average hours per response: Consumer surveys, quantitative: 0.25; consumer surveys, qualitative: 1.5; stakeholder surveys, quantitative: 0.25; stakeholder surveys, qualitative: 1.5.

Estimated annual burden hours: Consumer surveys, quantitative: 500; consumer surveys, qualitative: 300; stakeholder surveys, quantitative: 1,200; stakeholder surveys, qualitative: 300; total: 2,300.

General description of report: The Board uses this collection to seek input from users or potential users of the Board's publications, resources, and conference materials to understand their interests and needs; to inform decisions concerning content, design, and dissemination strategies; to gauge public awareness of the Board's publications, resources, and conferences; and to assess the effectiveness of the Board's communications with various respondents.

The surveys in this collection are used to gather qualitative and quantitative information directly from users or potential users of Board publications, resources, and conference materials, such as consumers (consumer surveys) and stakeholders (stakeholder surveys). Stakeholders may include, but are not limited to, nonprofits, community development organizations, consumer groups, conference attendees, financial institutions and other financial companies offering consumer financial products and services, other for profit companies, state or local agencies, and researchers from academic, government, policy, and other institutions.

The frequency of the survey and content of the questions will vary as needs arise for feedback on different resources and from different audiences.

Legal authorization and confidentiality: The FR 1378 is authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of the maximum employment, stable prices, and moderate long-term interest rates.'' Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.'' The information collection under the FR 1378 is used to fulfill these obligations.

In addition, the Board is responsible for implementing and drafting regulations and interpretations for various consumer protection laws. The information obtained from the FR 1378 may be used in support of the Board's development and implementation of regulatory provisions for these laws. Therefore, depending on the survey questions asked, the FR 1378 may be authorized pursuant to the Board's authority under one or more of those consumer protection statutes. The information collected under FR 1378 is not confidential.

Current actions: On May 11, 2020, the Board published a notice in the **Federal Register** (85 FR 27740) requesting public comment for 60 days on the extension, without revision, of the FR 1378. The comment period for this notice expired on July 10, 2020. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, September 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–20505 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: September 21, 2020 at 10:00 a.m.

PLACE: Virtual Webcast Meeting. The meeting is open to the public, but due to the current coronavirus pandemic, the public may observe this Board meeting via a live webcast on the Board's website.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via a live webcast from a link available on the Board's website. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's website at *www.federalreserve.gov.*

For media inquiries, please call 202–452–2955. If you need an accommodation for a disability, please contact Penelope Beattie on 202–375–1103. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Advance Notice of Proposed Rulemaking on the Community Reinvestment Act Regulation.

The documentation package (staff memos to the Board and background materials) will be available on the Board's website approximately 20 minutes before the start of the meeting. Due to the current pandemic, no paper copies will be available.

A recording and electronic transcript of the meeting will be available after the meeting on the Board's website. *http://www.federalreserve.gov/aboutthefed/boardmeetings/.*

CONTACT PERSON FOR MORE INFORMATION: Michelle Smith, Director, or Susan Stawick, Sr. Media Relations Specialist, Division of Board Members at 202–452–2955.

You may access the Board's website at *www.federalreserve.gov* for an electronic announcement. (The website also includes procedural and other information about the open meeting.)

Dated: September 14, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–20591 Filed 9–15–20; 4:15 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend, for three years, with revision, the ad hoc clearance for the Survey of Household Economics and Decisionmaking (SHED) (FR 3077; OMB No. 7100–0374). The revisions are effective immediately.

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.

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.

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. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection:

Report title: Survey of Household Economics and Decisionmaking (SHED).

Agency form number: FR 3077.

OMB control number: 7100–0374.

Effective Date: The revisions are effective immediately.

Frequency: Annually; On occasion.

Respondents: The Board expects that the respondents would include a nationally representative sample of non-institutionalized individuals [1] who are 18 years of age and older. Due to the nature of the third-party vendor's respondent pool, this sample naturally includes repeat respondents, which allows for evaluating changes in respondents' economic conditions, as well as time series analysis.

In 2019, the Board changed how respondents were selected to participate in the SHED questionnaire to more closely reflect a nationally representative sample. Thus, effective with the 2019 questionnaire, the respondent panel no longer contained a low- and moderate-income oversample. Instead, the same number of respondents were interviewed but those respondents were drawn as a random sample of adults, rather than by attempting to sample a disproportionate share of low- and moderate-income adults. This change was made to obtain a respondent sample that more closely reflects the overall adult population and to reflect that these deviations from a nationally representative sample were no longer necessary for analyses of these populations given the current size of the SHED respondent pool.

Effective with the 2018 SHED questionnaire, the respondent panel also no longer included an explicit sample of repeat respondents. Because approximately one-fifth of the vendor's total online respondent pool for the questionnaire is already comprised of repeat respondents, a substantial fraction of questionnaire respondents are repeat respondents without the need to have an explicit repeat sample.

The Board plans to continue to sample a nationally representative pool of respondents without an oversample of low- and moderate-income individuals and without an explicit repeat sample group.

Estimated number of respondents: Quantitative survey, 21,500 respondents; qualitative survey, 30 respondents.

Estimated average hours per response: Quantitative survey, 0.35; qualitative survey, 2.

Estimated annual burden hours: Quantitative survey, 7,525; qualitative survey, 180.

General description of report: The FR 3077 questionnaire is used to collect insightful information from consumers concerning the well-being of U.S. households and how individuals and their families are faring in the economy. The collected information could be used for the Board's Report on the Economic Well-Being of U.S. Households; Board studies or working papers; professional journals; the Federal Reserve Bulletin; testimony and reports to the Congress; or other vehicles. The SHED questionnaire includes such topics as individuals' overall financial well-being, employment experiences, income and savings behaviors, economic preparedness, access to banking and credit, housing and living arrangement decisions, education and human capital, student loans, and retirement planning. The overall content of the SHED questionnaire depends on changing economic, regulatory, or legislative developments as well as changes in the financial services industry.

[1] Non-institutionalized individuals refers to individuals who are not inmates of institutions, such as those who are incarcerated or live in a retirement home, hospital, or other medical institution, as well as active duty military.

Legal authorization and confidentiality: Section 2A of the Federal Reserve Act requires that the Board maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a). The Board uses the information obtained from the FR 3077 to help fulfill these obligations. The FR 3077 is a voluntary information collection.

Personally identifiable information collected on the SHED questionnaire, which would identify individual respondents, will be withheld under exemption 6 of the Freedom of Information Act (FOIA). Exemption 6 of the FOIA protects information from being disclosed that would result in an unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). In the event cognitive interviews are conducted with select individuals to obtain qualitative feedback regarding an individual respondent's thoughts or reflections on the questions posed in the SHED questionnaire, both the questions posed to the individual respondent and their responses would be protected by exemption 6 of the FOIA (5 U.S.C. 552(b)(6)).

Current actions: On May 11, 2020, the Board published an initial notice in the **Federal Register** (85 FR 27742) requesting public comment for 60 days on the extension, with revision, of the FR 3077. The Board proposed to revise the SHED questionnaire by changing some of the core questionnaire questions to reduce the time respondents spend on specific questions by simplifying the language, as well as incorporating additional questions on emerging economic issues, and removing questions that do not require that new data be collected on an annual basis. The comment period for this notice expired on July 10, 2020. The Board received one comment.

Detailed Discussion of Public Comments

The one commenter expressed support for the data collection while urging the Board to include a general life satisfaction question in addition to financial satisfaction metrics. The Board agrees with the commenter's suggestion that general life satisfaction questions are worthy of consideration for the survey; however, because space on the survey is limited and the survey primarily focuses on financial outcomes, the Board has opted not to incorporate the suggested question into the proposed core question set. However, the survey instrument is structured to include additional topics beyond the core question set, which are included in the survey periodically. Recognizing the value of the commenter's proposed question, the Board will include the suggested life satisfaction questions as potential ad-hoc questions to ask this year or in future years of the survey, pending space on the overall survey instrument.

Board of Governors of the Federal Reserve System, September 14, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–20506 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 2, 2020.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org*:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania;* on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard; to acquire more than 15 percent of the voting shares of Citizen's Financial Group, Inc., and thereby indirectly acquire voting shares of Citizen's Bank, National Association, both of Providence, Rhode Island.

B. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Peter Anderson, individually, and together with Marie Anderson, Karen Schumacher, and Cole Anderson, all of Drayton, North Dakota;* members of the Anderson Family Group, a group acting in concert, to retain voting shares of Koda Bancor, Inc., Drayton, North Dakota, and thereby indirectly retain voting shares of KodaBank, Drayton, North Dakota; and Wall Street Holding Company and Bank of Hamilton, both of Hamilton, North Dakota.

2. *The KodaBank Employee Stock Ownership Plan, Drayton, North Dakota; Peter Anderson, Drayton, North Dakota; Douglas Taylor; Grand Forks, North Dakota; and Dean Crotty, Bemidji, Minnesota, as co-trustees;* as members of a group acting in concert, to retain voting shares of Koda Bancor, Inc., Drayton, North Dakota, and thereby indirectly retain voting shares of KodaBank, Drayton, North Dakota; and Wall Street Holding Company and Bank of Hamilton, both of Hamilton, North Dakota.

Board of Governors of the Federal Reserve System, September 14, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–20540 Filed 9–16–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138; Docket No. 2020–0053; Sequence No. 9]

Information Collection; Contract Financing

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning contract financing. OMB approved this information collection for use through December 31, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by November 16, 2020.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov*

Instructions: All items submitted must cite Information Collection 9000–0138, Contract Financing. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0138, Contract Financing.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements: *FAR 52.232–28, Invitation to Propose Performance-Based Payments.* This provision requires an offeror, when invited to propose terms under which the Government will make performance-based contract financing payments during contract performance, to include the following: the proposed contractual language describing the performance-based payments; information addressing the contractor's investment in the contract and a listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

FAR 52.232–29, Terms for Financing of Purchases of Commercial Items.

FAR 52.232–30, Installment Payments for Commercial Items.

These clauses require contractors, under commercial purchases pursuant to FAR part 12, to include with their payment requests an appropriately itemized statement of the financing payments requested and other supporting information, prepared in concert with the contracting officer.

FAR 52.232–31, Invitation to Propose Financing Terms. This provision requires an offeror, when invited to propose terms under which the Government will make contract financing payments during contract performance under commercial purchases pursuant to FAR part 12, to include the following: the proposed contractual language describing the contract financing; and a listing of the earliest date and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment.

FAR 52.232–32, Performance-Based Payments. This clause requires the contractor's request for performance-based payment to include any information and documentation as required by the contract's description of the basis for payment; and a certification by a contractor official authorized to bind the contractor.

The contracting officer uses the required information to review and approve contract financing requests, and establish and administer contract financing terms.

C. Common Form

This information collection is being converted into a common form. The General Services Administration is the sponsor agency of this common form. All executive agencies covered by the Federal Acquisition Regulation will use this common form. Each executive agency will report their agency burden separately, and the reported information will be available at Reginfo.gov.

D. Annual Burden

General Services Administration

Respondents: 83.
Total Annual Responses: 506.
Total Burden Hours: 1,012.

E. Public Comment

DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.*

Please cite OMB Control No. 9000–0138, Contract Financing.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–20521 Filed 9–16–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Generic Clearance for Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality.*'' This proposed information collection was previously published in the **Federal Register** on June 10th, 2020 and allowed 60 days for public comment. AHRQ received one comment. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 19, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Generic Clearance for Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) reapprove generic pre-testing Clearance 0935–0124 for three years to facilitate AHRQ's efforts to (1) employ evaluation-type methods and techniques to improve AHRQ's current data collection and estimation procedures, (2) develop new collections and procedures, including toolkits, and (3) revise existing collections and procedures. AHRQ believes that developing, testing, and evaluating data collection and estimation procedures using survey methods and other techniques in anticipation of agency-sponsored studies can improve its information collection efforts, and the products it develops and allow AHRQ to be more responsive to fast-changing developments in the health care research field. AHRQ uses techniques to simplify data collection and estimation procedures, reduce respondent burden, and improve efficiencies to meet the needs of individuals and small business respondents who may have reduced budgets and staff.

This clearance request is limited to research on data collection, toolkit development, and estimation procedures and reports and does not extend to the collection of data for public release or policy formation. The current Clearance (0935–0124) was granted on November 3, 2017, and expires on November 30, 2020.

This generic clearance will allow AHRQ to draft and test toolkits, survey instruments and other data collection and estimation procedures more quickly and with greater lead time, thereby managing project time more efficiently and improving the quality of the data AHRQ collects. In some instances, the ability to test and evaluate toolkits, data collection and estimation procedures in anticipation of work or early in a project may result in the decision not to proceed with additional activities, which could save both public and private resources and eliminate respondent burden.

This generic clearance will facilitate AHRQ's response to a changing environment. Many of the tools AHRQ develops are made available to the private sector to assist in improving health care quality. The health and health care environment changes rapidly and requires a quick response from AHRQ to provide refined tools.

These preliminary research activities will not be used by AHRQ to regulate or sanction its customers. They will be entirely voluntary and the confidentiality of respondents and their responses will be preserved. Proposed information collections submitted under this generic clearance will be submitted for review by OMB with a response expected in 14 days.

Method of Collection

The information collected through preliminary research activities under this generic clearance will be used by AHRQ to employ techniques to (1) improve AHRQ's current data collection and estimation procedures, (2) develop new collections and procedures, including toolkits, and (3) revise existing collections and procedures in anticipation or in response to changes in the health or health care field. The end result will be improvement in AHRQ's data collections and procedures and the quality of data collected, a reduction or minimization of respondent burden, increased agency efficiency, and improved responsiveness to the public.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours, over the full 3 years of this clearance, for the respondents' time to participate in the research activities that may be conducted under this generic clearance. Mail surveys will be conducted with about 6,000 persons (2,000 per year for 3 years) and are estimated to average 20 minutes. Mail surveys may also be sent to respondents via email, and may include a telephone non-response follow-up. Telephone non-response follow-up for mailed surveys is not counted as a telephone survey in Exhibit 1. Not more than 600 persons, over 3 years, will participate in telephone surveys that will take about 40 minutes. Web-based surveys will be conducted with no more than 3,000 persons and will require no more than 10 minutes to complete. About 1,500 persons will participate in focus groups which may last up to two hours, while in-person interviews will be conducted with 600 persons and will take about 50 minutes. Automated data collection will be conducted for about 1,500 persons and could take up to 1 hour. Cognitive testing will be conducted with about 600 persons and is estimated to take 1½ hours to complete. The total burden over 3 years is estimated to be 8,900 hours (about 2,967 hours per year).

Exhibit 2 shows the estimated cost burden over 3 years, based on the respondents' time to participate in these research activities. The total cost burden is estimated to be $357,869.

EXHIBIT 1—ESTIMATED BURDEN HOURS OVER 3 YEARS

Type of information collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail/email *	6,000	1	20/60	2,000
Telephone	600	1	40/60	400
Web-based	3,000	1	10/60	500
Focus Groups	1,500	1	2.0	3,000
In-person	600	1	1.0	600
Automated **	1,500	1	1.0	1,500
Cognitive Testing ***	600	1	1.5	900
Totals	13,800	na	na	8,900

* May include telephone non-response follow-up in which case the burden will not change

** May include testing of database software, CAPI software or other automated technologies.

*** May include cognitive interviews for questionnaire or toolkit development, or ''think aloud'' testing of prototype websites.

EXHIBIT 2—ESTIMATED COST BURDEN OVER 3 YEARS

Type of information collection	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Mail/email	6,000	2,000	$40.21	$80,420
Telephone	600	400	40.21	16,084
Web-based	3,000	500	40.21	20,105
Focus Groups	1,500	3,000	40.21	120,630
In-person	600	600	40.21	24,126
Automated	1,500	1,500	40.21	60,315
Cognitive Testing	600	900	40.21	36,189
Totals	13,800	8,900	na	357,869

* Bureau of Labor & Statistics on ''Occupational Employment and Wages, May 2019'' found at the following URL: *https://www.bls.gov/oes/current/oes_nat.htm#b29-0000.htm* for the respondents.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 11, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–20469 Filed 9–16–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.*'' This proposed information collection was previously published in the **Federal Register** on June 11th, 2020 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 19, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The current clearance was approved on November 3, 2017 (OMB Control Number 0935–0179) and will expire on November 30, 2020.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the

sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Below we provide AHRQ's projected average annual estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 10.

Respondents: 10,900.

Annual responses: 10,900.

Frequency of Response: Once per request.

The total number of respondents across all 10 activities in a given year is 10,900.

Average minutes per response: 19.

Burden hours: 3,383.

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 Office of Management and Budget control number.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 11, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–20467 Filed 9–16–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare and Medicaid Services, Department of Health and Human Services.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) is providing notice of a new agreement re-establishing the ''Do Not Pay Initiative'' matching program between CMS and the Department of Treasury, Bureau of Fiscal Service (Fiscal Service).

DATES: The deadline for comments on this notice is October 19, 2020. The matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. Pursuant to 31 U.S.C. 3354(d)(1)(C), the matching program will be conducted for an initial term of 36 months (approximately October 13, 2020 to October 12, 2023) and within three months of expiration may be renewed for three additional years if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit written comments on this notice to the CMS Privacy Act Officer by mail at: Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services, Location: N1–14–56, 7500 Security Blvd., Baltimore, MD 21244–1850, or email *walter.stone@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact John Sofokles, Government Technical Lead, Center for Program Integrity, Centers for Medicare & Medicaid Services, at 410–786–6373, by email at *john.sofokles@cms.hhs.gov,* or by mail at 7500 Security Blvd., Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), provides certain protections for individuals applying for and receiving payments under federal benefit programs. The law governs the use of computer matching by federal agencies when records in a system of records (meaning, federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o)(2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program meets these requirements.

Barbara Demopulos.

Privacy Advisor, Division of Security, Privacy Policy and Governance, Office of Information Technology, Centers for Medicare & Medicaid Services.

PARTICIPATING AGENCIES:

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is the recipient agency, and the Department of the Treasury (Treasury), Bureau of Fiscal Service (Fiscal Service) is the source agency.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The statutory authorities for the matching program are Executive Order 13520 ''Reducing Improper Payments''

(Nov. 20, 2009); Presidential Memorandum on Enhancing Payment Accuracy through a ''Do Not Pay List'' (June 18, 2010); 31 U.S.C. 3351 *et seq.;* OMB Memorandum M–18–20 Transmittal of Appendix C to OMB Circular A–123, Requirements for Payment Integrity Improvement (June 16, 2018), and 5 U.S.C. 552a.

PURPOSE(S):

The purpose of the matching program is to provide CMS with information from Treasury's Working System which CMS will use to identify Medicare providers and suppliers who are ineligible for Medicare enrollment; to promptly suspend or revoke the Medicare billing privileges of the identified disqualified providers and suppliers; to enable recoupment of past payments made to those providers and suppliers; to assist CMS in detecting and preventing fraud, waste, abuse and in avoiding making future improper payments to disqualified providers and suppliers; and to enhance patient safety for beneficiaries in CMS programs.

CATEGORIES OF INDIVIDUALS:

The categories of individuals involved in the matching program are individual providers and suppliers who bill Medicare for payment.

CATEGORIES OF RECORDS:

The categories of records used in the matching program are identifying data, and payment eligibility status data. To request information from Treasury's Working System, CMS will provide Fiscal Service with the following information about a Medicare provider or supplier: Tax Identification Number (TIN), Business Name, Person First Name, Person Middle Name, Person Last Name, Address, City Name, State Code, Person Date of Birth, Person Sex, Vendor/Payee Phone Number, Vendor/Payee Email Address.

When Fiscal Service is able to match the TIN and other identifying data provided by CMS, Fiscal Service will disclose to CMS the following information about that provider or supplier:

Record Code.
Payee Identifier.
Agency Location Code.
Tax Identification Type.
Tax Identification Number.
Business or Individual or Government.
DUNS Number.
Payee Business Name.
Payee Business DBA Name.
Person Full Name.
Person First Name.
Person Middle Name.
Person Last Name.
Address.
Person Date of Birth.
Person Sex.
Vendor/Payee Status.
Phone Type.
Vendor/Payee Phone Number.
Vendor/Payee Fax Number.
Vendor/Payee Email Address.
Vendor/Payee Active Date.
Vendor/Payee Expiration Date.
Agency Record Grouping.
Other Agency Data.
Match Type.
Match Source.
Match Level.
Match Date/Time.
Matched Party Type.
Matched Tax ID Number.
Matched Tax ID Type Code (alternate).
Matched Tax ID Number (alternate).
Match DUNS Number.
Matched Full Name.
Matched First Name.
Matched Middle Name.
Matched Last Name.
Matched Business Name.
Matched DBA Business Name.
Matched Birth Date.
Matched Death Date.
Matched List Status Code.
Matched List Status Code Description.
Matched List Effective Date.
Matched Address.
Matched City.
Matched State Code.
Matched Zip Code.
Matched Country Code.

SYSTEM(S) OF RECORDS:

The records used in this matching program will be disclosed from the following systems of records, as authorized by relevant routine uses published in the System of Records Notices (SORNs) cited below:

A. SYSTEM OF RECORDS MAINTAINED BY CMS:

- The Provider Enrollment, Chain, and Ownership System (PECOS), System No. 09–70–0532, 71 FR 60536 (Oct. 13, 2006), 78 FR 32257 (May 29, 2013) and 83 FR 6591 (Feb. 14, 2018).

B. SYSTEM OF RECORDS MAINTAINED BY FISCAL SERVICE:

- The Department of the Treasury, Bureau of the Fiscal Service .017—Do Not Pay Payment Verification Records, 85 FR 11776 at 11803 (Feb. 27, 2020).

[FR Doc. 2020–19956 Filed 9–16–20; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2020–N–1735]

Eisai, Inc.; Withdrawal of Approval of Two New Drug Application for BELVIQ (lorcaserin hydrochloride) and BELVIQ XR (lorcaserin hydrocholoride)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the approval of two new drug applications for BELVIQ (lorcaserin hydrochloride (HCl)) tablets and BELVIQ XR (lorcaserin HCl) extended-release tablets held by Eisai, Inc., 155 Tice Blvd., Woodcliff Lake, NJ 07677 (Eisai). Eisai requested withdrawal of these applications and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: FDA approved NDA 022529 for BELVIQ (lorcaserin HCl) 10 milligrams (mg) tablets and NDA 208524 for BELVIQ XR (lorcaserin HCl) 20 mg extended-release tablets on June 27, 2012 and July 15, 2016, respectively, as an adjunct to a reduced-calorie diet and increased physical activity for chronic weight management in adults with an initial body mass index (BMI) of:

- 30 kg/m^2 or greater (obese) or
- 27 kg/m2 or greater (overweight) in the presence of at least one weight-related comorbid condition, (*e.g.,* hypertension, dyslipidemia, type 2 diabetes).

On January 14, 2019, FDA issued a Drug Safety Communication alerting the public that results from a clinical trial assessing the risk of heart-related problems show a possible increased risk of cancer with BELVIQ and BELVIQ XR (see *https://www.fda.gov/drugs/drug-safety-and-availability/safety-clinical-trial-shows-possible-increased-risk-cancer-weight-loss-medicine-belviq-belviq-xr*). On February 13, 2020, FDA announced it had asked Eisai to voluntarily withdraw BELVIQ and BELVIQ XR from the U.S. market because a safety clinical trial showed an increased occurrence of cancer (see

https://www.fda.gov/drugs/drug-safety-and-availability/fda-requests-withdrawal-weight-loss-drug-belviq-belviq-xr-lorcaserin-market).

On February 13, 2020, Eisai requested that FDA withdraw approval of NDA 022529 for BELVIQ and NDA 208524 for BELVIQ XR under § 314.150(d) (21 CFR 314.150(d)), and waived its opportunity for a hearing.

For the reasons discussed above, and pursuant to the applicant's request, approval of NDA 022529 BELVIQ (lorcaserin HCl) tablets and 208524 BELVIQ XR (lorcaserin HCl) extended-release tablets, and all amendments and supplements thereto, are withdrawn under § 314.150(d). Distribution of BELVIQ into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: September 11, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–20458 Filed 9–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA–2002–N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—April Through June 2020

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from April through June 2020. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Jon Dorman, by telephone at (571) 457–7220, or by email at *jon.dorman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an Independent Review Entity (IRE) for Part C organization determination appeals, or by PDPSs and an IRE for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the three-month period of April through June 2020. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

III. How To Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

IV. OCPM Releases for April Through June 2020

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were issued or revised in the three-month period of April through June 2020. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

OCPM Chapter 2: Information Disclosure

On June 17, 2020, OMHA issued OCPM Chapter 2, which describes the process used by OMHA staff when addressing communications with parties and non-parties, responding to inquiries from the public and governmental entities, safeguarding information in accordance with applicable law, and, when necessary, reporting unauthorized disclosures of protected information. The chapter explains how OMHA is responsible for protecting personal, tax, and health information in accordance with the Social Security Act, the Privacy Act, the Freedom of Information Act (FOIA), the Internal Revenue Code, and other applicable Federal statutes and regulations, while also ensuring information is provided upon request to appropriate individuals or entities.

Karen W. Ames,

Executive Director, Office of Medicare Hearings and Appeals.

[FR Doc. 2020–20550 Filed 9–16–20; 8:45 am]

BILLING CODE 4150–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: October 21, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *bo-shiun.chen@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B NSD–B.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joel A Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301)–496–9223, *joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel BRAIN Initiative Exploratory Team Brain Circuit Programs U01 Review.

Date: October 23, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301 451–2854, *li.jia@nih.gov*.

Name of Committee: Neurological Sciences Training Initial Review Group NST–2 Subcommittee NINDS Post-doc Fellowships.

Date: November 9–11, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NSC Building Bethesda, MD 20892, 301–496–9223, *deanna.adkins@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NINDS Institutional Research Training Program T32.

Date: November 16–17, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208 Bethesda, MD 20892, *delany.torressalazar@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20494 Filed 9–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; RFA–AI–20–001: Combating Antibiotic-Resistant Bacteria (CARB) Interdisciplinary Research Units (U19 Clinical Trial Not Allowed).

Date: October 14–16, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21,

Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20496 Filed 9–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 Drug Abuse Special Emphasis Panel; Single Cell Opioid Responses in the Context of HIV (SCORCH) Program Expansion: CNS Data Generation for Chronic Opioid, Methamphetamine, and/or Cocaine Exposures (U01 Clinical Trial Not Allowed).

Date: October 26, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, 3 WFN 9th Floor, MSC 6021, Bethesda, MD 20892, (301) 402–7371, *yvonne.ferguson@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20497 Filed 9–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Combating Antibiotic-Resistant Bacteria (CARB) Interdisciplinary Research Units.

Date: October 14–16, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20852, 240–669–5199, *cerritem@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20492 Filed 9–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel NIDA R13 Conference Grant Review (R13).

Date: September 21–23, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, 3 WFN 9th Floor, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Exploring Epigenomic or Non-Coding RNA Regulation in the Development, Maintenance, or Treatment of Chronic Pain (R61/R33 Clinical Trial Optional).

Date: October 8, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, 3 WFN 9th Floor, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist

Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20493 Filed 9–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given for the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) on September 30, 2020.

The Council was established to advise the Secretary, Department of Health and Human Services (HHS); the Assistant Secretary for Mental Health and Substance Use, SAMHSA; and Director, CSAP concerning matters relating to the activities carried out by and through the Center and the policies respecting such activities.

The meeting will be open to the public and will include the discussion of the member grant review process, substance use prevention during the pandemic, and prevention data. The meeting will also include updates on CSAP program developments.

The meeting will be held via webcast and phone only. Attendance by the public on-site will not be available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations should notify the contact on or before one week prior to the meeting. Up to five minutes will be allotted for each presentation.

To participate in the meeting, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' website, *https://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with the CSAP Council's Designated Federal Officer (see contact information below).

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee website, *https://www.samhsa.gov/about-us/advisory-councils,* or by contacting the Designated Federal Officer.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: September 30, 2020, from 1:00 p.m. to 5:00pm EDT: (OPEN).

Place: SAMHSA, 5600 Fishers Lane, Rockville, MD 20852, Adobe Connect webcast: Please register at the SAMHSA Committees' website, listed above.

Contact: Matthew J. Aumen, Designated Federal Officer, SAMHSA CSAP NAC, 5600 Fishers Lane, Rockville, MD 20852, Telephone: 240–276–2440, Fax: 301–480–8480, Email: *matthew.aumen@samhsa.hhs.gov.*

Dated: September 11, 2020.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2020–20479 Filed 9–16–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–24]

60-Day Notice of Proposed Information Collection: HUD Loan Sale Bidder Qualification Statement; OMB Control No. 2502–0576

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* November 16, 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 202–402–3400 (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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: HUD Loan Sale Bidder Qualification Statement.

OMB Approval Number: 2502–0576.

OMB Expiration Date: January 31, 2021.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–90092; HUD–9611; and HUD–9612.

Description of the need for the information and proposed use: The Qualification Statement solicits from Prospective bidders to the HUD Loan Sales the basic qualifications required for bidding including but not limited to, Purchaser Information (Name of Purchaser, Corporate Entity, Address, Tax ID), Business Type, Net Worth, Equity Size, Prior History with HUD Loans and prior sales participation. By executing the Qualification Statement, the purchaser certifies, represents and warrants to HUD that each of the statements included are true and correct as to the purchaser and thereby qualifies them to bid.

Respondents (*i.e.* affected public): Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 320.

Estimated Number of Responses: 640.

Frequency of Response: On occasion.

Average Hours per Response: 0.5 hours.

Total Estimated Burden: 160.

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.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35. Assistant Secretary for Housing—Federal Housing Commissioner, Dana T. Wade, 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: September 14, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–20498 Filed 9–16–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–30; OMB Control No. 2502–0524]

60-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* November 16, 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 202–402–3400 (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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents.

OMB Approval Number: 2502–0524.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–92901, HUD–92902, HUD–92051, HUD–92561, HUD–92800.5b, HUD–92900–A, HUD–92300, HUD–1, HUD–1Addendum, Fannie Mae (FNMA)–1009, FNMA–1025, FNMA–1003, FNMA–1004, FNMA–1004c, FNMA–1073, HUD–92541, HUD–92544, NMPA–99A, NPMA–99B.

Description of the need for the information and proposed use: The Home Equity Conversion Mortgage (HECM) program is the Federal Housing Administration's (FHA) reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the HECM Program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. The currently approved information collection is necessary to screen mortgage insurance applications in order to protect the FHA insurance fund and the interests of consumers and potential borrowers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,375.

Estimated Number of Responses: 59,375.

Frequency of Response: Occasionally.

Average Hours per Response: 2.54.

Total Estimated Burdens: $6,566,595.46.

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.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Assistant Secretary for Housing—Federal Housing Commissioner, Dana T. Wade, 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: September 14, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–20490 Filed 9–16–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[201D0102DM_DS62470000_DMSN00000.000000_DX.62407.CEN00000; OMB Control Number 1085–0001]

Agency Information Collection Activities; Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses

AGENCY: Indian Arts and Crafts Board, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Department of the Interior are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 16, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference Office of Management and Budget (OMB) Control Number 1085–0001 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 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: The *Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses* is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The *Source Directory* is a listing of American Indian and Alaska Native owned and operated arts and crafts businesses that may be accessed by the public on the Indian Arts and Crafts Board's website *http://www.doi.gov/iacb.*

The service of being listed in this directory is provided free-of-charge to members of federally recognized tribes. Businesses listed in the *Source Directory* include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately owned-and-operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately owned-and-operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the *Source Directory* are arranged alphabetically by State.

The Director of the IACB uses this information to determine whether an individual or business applying to be listed in the *Source Directory* meets the requirements for listing. The approved application will be printed in the Source Directory. The *Source Directory* is updated as needed to include new businesses and to update existing information. Applicants or current enrollees submit Form DI–5001, ''Source Directory Business Listing Application'' which collects the following information:

- Type of listing they are applying for:
  - —New listing;
  - —Renewal/changes;
  - —Individual; or
  - —Group.
- Business name;
- Manager and owner name, along with Tribal affiliation; and
- Tribal or group affiliation of signer.

Title of Collection: Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses.

OMB Control Number: 1085–0001.

Form Number: DI–5001.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 25.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

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.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–20484 Filed 9–16–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000PC0000.20X. LXSIADVSBD00.241A]

Call for Nominations for the National Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three positions on the Wild Horse and Burro Advisory Board (Board) that will become vacant on October 16, 2020. The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

DATES: Nominations must be post marked or submitted to the following addresses no later than November 2, 2020.

ADDRESSES: All mail sent via the U.S. Postal Service should be addressed as follows: Wild Horses and Burro Division, U.S. Department of the Interior, Bureau of Land Management, Attn: Dorothea Boothe, WO–260, 9828 31st Avenue; Phoenix, AZ 85051. All packages that are sent via FedEx or UPS should be addressed as follows: U.S. Department of the Interior, Bureau of Land Management, Wild Horse and Burro Division, Attn: Dorothea Boothe, 9828 31st Avenue, Phoenix, AZ 85051. Please consider emailing PDF documents to Ms. Boothe at *dboothe@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Acting Wild Horse and Burro Program Coordinator, telephone: 602–906–5543, email: *dboothe@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Boothe during normal business hours. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Members of the Board serve without compensation; however, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business, approved by the Designated Federal Officer (DFO), may be allowed travel expenses, including per diem in lieu of subsistence under 5 U.S.C. 5703, in the same manner as persons employed intermittently in government service. Nominations for a term of 3 years are needed to represent the following categories of interest:

- Natural Resource Management;
- Public Interest (with special knowledge of equine behavior); and
- Wild Horse and Burro Research.

The Board will meet one to four times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board. Nominations should include a resume providing adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Board and permit the Department of the Interior to contact a potential member. Nominations are to be sent to the address listed under **ADDRESSES**.

As appropriate, certain Board members may be appointed as special Government employees (SGEs). Please be aware that applicants selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: *https://www.doi.gov/ethics/oge-form-450.*

Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact (202) 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

Membership Selection: Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning. No person is to be denied an opportunity to serve because of race, age, sex, sexual orientation, religion, or national origin. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by the State or Federal Government.

(Authority: 43 CFR 1784.4–1)

David Jenkins,

Assistant Director, Resources and Planning.

[FR Doc. 2020–20515 Filed 9–16–20; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030627; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, and Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University and Robert S. Peabody Institute of Archaeology have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes. Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Peabody Museum of Archaeology and Ethnology, Harvard University or the Robert S. Peabody Institute of Archaeology. Repatriation of the human remains and associated funerary objects to the Indian Tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian Tribe that believes it has a cultural

affiliation with the human remains and associated funerary objects should contact the Peabody Museum of Archaeology and Ethnology, Harvard University or the Robert S. Peabody Institute of Archaeology at the addresses below by October 19, 2020.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702; Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

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 Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; and of the completion of an inventory of associated funerary objects under the control of the Robert S. Peabody Institute of Archaeology, Andover, MA. The human remains and associated funerary objects were removed from the Taylor Hill site in Wellfleet, Barnstable County, MA.

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 Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Wampanoag Repatriation Confederation on behalf of the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Wampanoag Tribe of Gay Head (Aquinnah); and the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group.

History and Description of the Remains

In 1945, human remains representing at minimum, three individuals were removed from Taylor Hill in Wellfleet, Barnstable County, MA. These human remains were inadvertently discovered during a construction project on the private property of Roderick Angus. Angus donated the remains to the Museum. No known individuals were identified. The three associated funerary objects are a fragmentary celt, a whetstone, and a mackerel shark tooth are in the custody of the Robert S. Peabody Institute of Archaeology, Andover, MA. A triangular point also from the burial was not located at the Peabody Institute or the Peabody Museum.

Based on artifact characteristics and radiocarbon dating, burials from the Taylor Hill site are dated to the late Middle Woodland period (ca. 1300–1100 B.P.). Close study of these sites in recent years supports a reassessment of Woodland Period cultural continuity in this area of Cape Cod, known as the Outer Cape. Generally, the Middle Woodland Period in Massachusetts is characterized by a partial integration of horticultural activities into a largely hunting-fishing-gathering lifestyle with notably limited evidence for permanent village sites. Inferences made from archeological data indicate that the geographic and social boundaries continued to be fluid in comparison to the rigid political boundaries in place during the Contact Period. Ongoing assessments of archeological data from the Outer Cape, however, indicate that year-round occupation of sites and use of specialized processing sites began there during the Middle Woodland. During this period, the conditions of the Outer Cape became more predictable with the formation of stable marsh and estuary environments. Archeological evidence from the Taylor Hill area specifically demonstrates a related change in settlement patterns and material culture. Residents there took advantage of these environmental conditions in favor of long-term settlement. The year-round exploitation of the environmental diversity of the outer Cape Cod region, both marine and terrestrial, which began in the Middle Woodland period and continued through the Late Woodland and Contact periods, is the hallmark of Outer Cape Wampanoag subsistence patterns. The Middle Woodland inhabitants of the Taylor Hill area, therefore, established a formal connection with the geographic area that continued into later periods. Related to this localized change in subsistence patterns, the mortuary practices of the Taylor Hill area differ from those of Middle Woodland sites in other areas. Generally, Middle Woodland mortuary contexts are not clustered or elaborate. Divergently, Taylor Hill is marked by an unusually high density of burials within an area of 10 square meters and a diversity in mortuary treatment that is apparently based on social hierarchy. In summary, Taylor Hill is a unique area in the Middle Woodland Period of southeastern Massachusetts because of the inhabitants' sedentism and designation of burial areas. These patterns indicate that, unlike other Middle Woodland people in southeastern Massachusetts, the inhabitants of Taylor Hill had developed a particular relationship with the land. It is therefore possible to demonstrate by a preponderance of the evidence that a relationship of shared group identity exists between ancestral Wampanoag people at the Taylor Hill site during the Middle Woodland period and present-day Wampanoag people.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects 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 Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), Indian tribes that represent people of Wampanoag descent.

Additional Requestors and Disposition

Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702; or Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by October 19, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.)

and the Wampanoag Tribe of Gay Head (Aquinnah) may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University and Robert S. Peabody Institute of Archaeology are responsible for notifying the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Wampanoag Tribe of Gay Head (Aquinnah); and the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group, that this notice has been published.

Dated: September 10, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–20514 Filed 9–16–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–FORA–30058; PS.SPPFL0080.00.1]

Boundary Adjustment at Fort Raleigh National Historic Park

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary adjustment.

SUMMARY: The boundary of Fort Raleigh National Historic Park is adjusted to include two parcels of land totaling 2.80 acres, more or less. The fee simple interest in 2.32 acres and a perpetual easement for ingress and egress in the adjoining 0.48 of an acre parcel will be donated to the United States by the North Carolina Coastal Land Trust. These properties are located in Dare County, North Carolina.

DATES: The effective date of this boundary adjustment is September 17, 2020.

ADDRESSES: The map depicting this boundary adjustment is available for inspection at the following locations: National Park Service, Land Resources Program Center, Interior Region 2, 1924 Building, Fifth Floor, 100 Alabama Street SW, Atlanta, GA 30303–8701, and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief Realty Officer John Danner, National Park Service, Land Resources Program Center, Interior Region 2, 1924 Building, Fifth Floor, 100 Alabama Street SW, Atlanta, GA 30303–8701; telephone (404) 507–5657; email *john_danner@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 54 U.S.C. 100506 (c)(1)(B), as amended, the boundary of Fort Raleigh National Historic Park is adjusted to include two properties totaling 2.80 acres of land in Dare County, North Carolina: 2.32 acres in fee-simple are identified as Tract No. 01–124 and 0.48 of an acre in perpetual easement for ingress and egress is identified as Tract No. 01–125. This boundary adjustment is depicted on Map No. 383/142,840 dated February, 2019.

Specifically, 54 U.S.C. 100506 (c)(1)(B), as amended, states that the Secretary of the Interior may make adjustments to the boundary of Fort Raleigh National Historic Park by publication of the amended description thereof in the **Federal Register**. The Committees have been notified of this boundary revision. This boundary revision and subsequent acquisition of Tract Nos. 01–124 & 01–125 will support the National Park Service's mission of preserving the natural landscape and rich history of Roanoke Island and will offer park visitors a wide range of recreational opportunities.

Lance Hatten,

Acting Regional Director, Interior Region 2.

[FR Doc. 2020–20546 Filed 9–16–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–FRRI–30059; PS.SSELA0366.00.1]

Minor Boundary Revision at Freedom Riders National Monument

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of the Freedom Riders National Monument is modified to include an additional 0.06 acres of land identified as Tract 01–103. The tract is located immediately adjacent and south of the former Greyhound Bus Station property in Calhoun County, Alabama. The boundary revision is depicted on Map No. 265/147640 dated August 24, 2018. The map is available for inspection at the following locations: National Park Service, Interior Region 2, 1924 Building, 100 Alabama Street SW, Atlanta, Georgia 30303 and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief Realty Officer John C. Danner, National Park Service, Land Resources Program Center, Interior Region 2 at 1924 Building, Fifth Floor, 100 Alabama Street SW, Atlanta, GA 30303–8701; telephone (404) 507–5657; email *john_danner@nps.gov.*

DATES: The effective date of this boundary revision is September 17, 2020.

SUPPLEMENTARY INFORMATION: 54 U.S.C. 100506(c)(1)(B), provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. This boundary revision and subsequent acquisition of Tract 01–103 by donation will enable the National Park Service to manage and protect significant resources located in the Freedom Riders National Monument.

Lance Hatten,

Acting Regional Director, Interior Region 2.

[FR Doc. 2020–20551 Filed 9–16–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30854; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before September 5, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by October 2, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their

consideration were received by the National Park Service before September 5, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

DELAWARE

New Castle County

American Vulcanized Fibre Company-Wilmington Plant, 700 Maryland Ave., Wilmington, SG100005688

FLORIDA

Seminole County

Georgetown Historic District, East 2nd St., Mellonville, Celery, and Sanford Aves., Sanford, SG100005670

IOWA

Marion County

Pella High School, 712 Union St., Pella, SG100005684

LOUISIANA

Lafayette Parish

Lafayette Central Business District, Roughly bounded by East Cypress, Polk, Barry, Lafayette, West Garfield and South Buchanan Sts., Lee Ave., Rue Bibliotheque, and the RR., Lafayette, SG100005680

Orleans Parish

Louisiana Coca-Cola Bottling Company Plant, 1050 South Jefferson Davis Pkwy., New Orleans, SG100005685

MICHIGAN

Chippewa County

Sault Ste. Marie Historic Commercial District, Ashmun St. between Water and Easterday Sts., Portage Ave. between Brady and Ferris Sts., and Ashmun St. cross street blocks of Ridge, Maple, Arlington, Ann, and Spruce Sts., Sault Ste. Marie, SG100005683

MINNESOTA

Hennepin County

Aaron Carlson Corporation Factory, 1505 Central Ave. NE, Minneapolis, SG100005672

MISSISSIPPI

Webster County

Pittman Log House, 1316 Pepper Town Rd., Eupora vicinity, SG100005671

MISSOURI

Jackson County

Southwestern Bell Administration Building, 500 East 8th St., Kansas City, SG100005679

NEW YORK

Schenectady County

George Washington Carver Community Center, 700 Craig St., Schenectady, SG100005677

SOUTH CAROLINA

Beaufort County

Means-Gage House, 1207 Bay St., Beaufort, SG100005675

Charleston County

Marine Barracks, Charleston Navy Yard, Truxtun Ave. between Marine and Goldberg Aves., North Charleston, SG100005676

Georgetown County

Pee Dee River Rice Planters Historic District (Boundary Increase), (Georgetown County Rice Culture MPS), 1 Ave. of Live Oaks, Pawleys Island vicinity, BC100005674

Additional documentation has been received for the following resources:

OHIO

Cuyahoga County

Scranton South Side Historic District (Additional Documentation), 2314–2658, 3339 Scranton Rd., 1632–2101 Holmden, 1644–2115 Brainard, 1724–2105 Corning, and 1701–2034 Clover Aves., Cleveland, AD15000371

Comment period: 3 days

SOUTH CAROLINA

Georgetown County

Pee Dee River Rice Planters Historic District (Additional Documentation), (Georgetown County Rice Culture MPS), Along the Pee Dee and Waccamaw Rivers, Georgetown vicinity, AD88000532

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

CALIFORNIA

Ventura County

Burro Flats Cultural District, Address Restricted, Canoga Park vicinity, SG100005678

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 8, 2020,

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–20491 Filed 9–16–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of National Health Emergency (NHE) Grants To Address the Opioid Crisis

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Assistant Secretary for Policy (OASP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 19, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Chief Evaluation Office of the U.S.

Department of Labor (DOL) has commissioned an evaluation of the National Health Emergency (NHE) Dislocated Worker Demonstration Grants to Address the Opioid Crisis. DOL awarded $22 million in NHE grants to six states in 2018. These grants enable states to test innovative approaches to address the economic and workforce-related impacts of the opioid epidemic. The evaluation of the NHE Grants to Address the Opioid Crisis offers a unique opportunity to build knowledge about the implementation of these approaches, identify perceived challenges and promising practices, and share information with grantees and other stakeholders as they seek to address the opioid crisis. The NHE grant program and subsequent evaluation are authorized by Title 29 of the American Competitiveness and Workforce Improvement Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 26, 2018 (83 FR 66308).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OASP.

Title of Collection: Evaluation of National Health Emergency (NHE) Grants to Address the Opioid Crisis.

OMB Control Number: 1290–0NEW.

Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Respondents: 80.

Total Estimated Number of Responses: 160.

Total Estimated Annual Time Burden: 117 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–20529 Filed 9–16–20; 8:45 am]

BILLING CODE 4510–HX–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 20–074]

Name of Information Collection: COVID 19 Census of NASA Grantees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection; renewal with change of an existing information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by October 19, 2020.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Roger Kantz, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 281–792–7885 or email *Travis.Kantz@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA is requesting an extension with change to this existing collection in order to continue to gather information consistent with OMB and NASA COVID guidance. This data will help inform NASA about the status and ongoing implementation issues surrounding COVID mitigation for NASA grantees and will improve the quality and responsiveness of NASA in responding to grantee issues which impact scientific research funded by NASA. This information may be disclosed as necessary to NASA personnel, contractors, and partners to administer NASA Education programs. It also may be disclosed to NASA administrators and managers, Office of Management and Budget (OMB) officials, and members of Congress for the purposes of accountability and tracking of program and project efficiency and effectiveness.

II. Methods of Collection

Interview

III. Data

Title: COVID 19 Census of NASA Grantees.

OMB Number: 2700–0177.

Type of review: Renewal with Change.

Affected Public: Educational institutions from k-12, universities, community and tribal colleges, museums.

Estimated Annual Number of Activities: 2.

Estimated Number of Respondents per Activity: 156.

Annual Responses: 1.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 312.

Estimated Total Annual Cost:$1,825,588.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Roger Kantz,

NASA PRA Clearance Officer.

[FR Doc. 2020–20511 Filed 9–16–20; 8:45 am]

BILLING CODE 7510–13–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–243 and CP2020–273; MC2020–244 and CP2020–274]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This

notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 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:

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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).:* MC2020–243 and CP2020–273; *Filing Title:* USPS Request to Add Priority Mail Contract 658 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2020.

2. *Docket No(s).:* MC2020–244 and CP2020–274; *Filing Title:* USPS Request to Add First-Class Package Service Contract 112 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–20528 Filed 9–16–20; 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 SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 657 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–240, CP2020–270.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20465 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 3, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 166 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–241, CP2020–271.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20466 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 165 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–237, CP2020–267.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20462 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 3, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 167 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–242, CP2020–272.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20454 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 656 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–239, CP2020–269.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20464 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 11, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 658 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–243, CP2020–273.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20455 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 11, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 112 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–244, CP2020–274.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20456 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 653 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–234, CP2020–264.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20459 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 1, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 654 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–235, CP2020–265.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20460 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 655 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–238, CP2020–268.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20463 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select and Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 17, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 1, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select and Parcel Return Service Contract 12 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–236, CP2020–266.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–20461 Filed 9–16–20; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Representative Payee Parental Custody Monitoring; OMB 3220–0176.

Under Section 12(a) of the Railroad Retirement Act (RRA) (45 U.S.C. 231k), the Railroad Retirement Board (RRB) is authorized to select, make payments to, and to conduct transactions with, a beneficiary's relative or some other person willing to act on behalf of the beneficiary as a representative payee. The RRB is responsible for determining if direct payment to the beneficiary or payment to a representative payee would best serve the beneficiary's interest. Inherent in the RRB's authorization to select a representative payee is the responsibility to monitor the payee to assure that the beneficiary's interests are protected. The RRB utilizes Form G–99D, Parental Custody Report, to obtain information needed to verify that a parent-for-child representative payee still has custody of the child. One response is required from each respondent.

The RRB proposes the following changes to Form G–99d:

- Minor change item 4 layout.
- Add new item 6 to solicit the total amount of railroad retirement benefits received for the child during the reporting period.
- Add new item 7 to solicit the dollar amount of railroad retirement benefits used for the child during the reporting period.
- Add new item 8 to solicit a description of how the railroad retirement benefits were used for the child during the reporting period.
- Add new item 9 to solicit how the surplus railroad retirement benefits, if any, were held for the child, for example, in cash, a checking account, a savings account, or other means and the tittle of any checking or savings accounts holding surplus benefits.
- Renumbered item 6 Certification to item 10.
- Update to the Paperwork Reduction Act and Privacy Act Notices to change the burden time from 5 to 15 minutes.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–99d	2,100	15	525
Total	2,100		525

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2020–20480 Filed 9–16–20; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89828; File No. SR–C2–2020–013]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend its Fees Schedule

September 11, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2020 Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') is filing with the Securities and Exchange Commission (''Cboe Commission'') a proposed rule change to amend the Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to amend certain standard transaction fees for SPY transactions. Specifically, the Exchange proposes to (1) amend the transaction fee for public customer SPY orders that remove liquidity, (2) amend the rebate for C2 market-maker SPY orders that add liquidity, (3) amend the rebate for non-customer, non-market-maker SPY orders that add liquidity and (4) adopt an enhanced rebate for C2 market-maker SPY orders that are NBBO Joiners or NBBO Setters. The proposed changes will be effective September 1, 2020.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share and currently the Exchange represents approximately 3% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

First, the exchange proposes to amend the transaction fee for public customer SPY orders that remove liquidity. Currently, public customer orders in all equity, multiply-listed index, ETF and ETN options classes, including SPY, that remove liquidity are assessed a standard transaction fee of $0.43 per contract and yield fee code ''PC''. The Exchange proposes to reduce the fee assessed for public customer SPY orders that remove liquidity to $0.39 per contract and adopt new fee code ''SC'' for such orders (and remove SPY orders from fee code ''PC'').

The Exchange next proposes to amend the rebate for C2 market-maker SPY orders that add liquidity. Currently, C2 market-makers orders in all equity, multiply-listed index, ETF and ETN options classes, including SPY, that add liquidity are provided a rebate of $0.41 per contract and yield fee code ''PM''. The Exchange proposes to reduce the rebate provided for market-maker SPY orders that add liquidity to $0.26 per contract per contract and adopt new fee code ''SM'' for such orders (and remove SPY orders from fee code ''PM'').

The Exchange also proposes to amend the rebate for non-market-maker, non-customer SPY orders that add liquidity. Currently, non-market-maker, non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary by Month (August 31, 2020), available at *https://markets.cboe.com/us/options/market_statistics/.*

customer orders (*i.e.,* Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) in all equity, multiply-listed index, ETF and ETN options classes, including SPY, that add liquidity are provided a rebate of $0.36 per contract and yield fee code ''PN''. The Exchange proposes to reduce the rebate provided for non-market-maker, non-customer SPY orders that add liquidity to $0.20 per contract per contract and adopt new fee code ''SN'' for such orders (and remove SPY orders from fee code ''PN'').

The Exchange also proposes to adopt a new rebate of $0.31 per contract for C2 market-maker SPY orders that are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter and adopt new fee code ''SL'' for such orders. Particularly, to qualify as a NBBO Joiner, a C2 market-maker order must improve the C2 Best Bid or Offer (''BBO'') and result in C2 joining an existing NBBO. Only the first order received that results in C2 BBO joining the NBBO at a new price level will qualify for the enhanced rebate. If C2 is at the NBBO, the order will not qualify. Alternatively, C2 market-makers may receive the enhanced rebate if they are a NBBO Setter. To qualify as a NBBO Setter and receive the enhanced rebate, a C2 market-maker order must set the NBBO. The Exchange believes the proposed enhanced rebate for C2 market-makers that are NBBO Joiners or Setters will incentivize liquidity providers to provide more aggressively priced liquidity in SPY options.

The Exchange lastly proposes to adopt a new table in the Fees Schedule to set forth SPY-specific pricing, similar to pricing tables adopted for RUT and DJX. The Exchange also proposes to clarify that the first transaction fee table does not apply to SPY or DJX.[4] The Exchange notes that transaction fees and rebates that apply to (1) public customer SPY orders that add liquidity, (2) C2 market-maker SPY orders that remove liquidity, (3) non-market-maker, non-customer SPY orders that remove liquidity, (4) SPY orders that trade at the open and (5) resting SPY orders that trades with resting complex orders are not changing, nor are the associated fee codes. Rather the Exchange is just copying those current fee codes and rates into the new SPY pricing table to make the Fees Schedule easy to follow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. In particular, the proposed changes to Exchange execution fees and rebates for certain SPY orders are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating additional incentives to providing aggressively priced displayed liquidity, which the Exchange believes would enhance market quality to the benefit of all market participants.

The Exchange believes its proposed changes are reasonable as they are competitive and in line with SPY-specific pricing at other exchanges.[8] The Exchange believes it's reasonable to reduce the transaction fee for public customer SPY orders that remove liquidity because market participants will be subject to lower fees for such orders. The Exchange believes the proposed amendment will also encourage market participants to increase retail SPY order flow to the Exchange. The Exchange believes it's reasonable to reduce the rebates for both C2 market-maker and non-market-maker, non-customer SPY orders that add liquidity because such market participants will still receive rebates for such orders, albeit at a lower amount. Additionally, market-makers that are NBBO Joiners or Setters would be eligible to receive an enhanced rebate. The Exchange believes that the proposed NBBO Joiner and Setter rebates are reasonable as C2 market-makers would be eligible to receive enhanced rebates for orders that add liquidity in return for improving the C2 BBO resulting in C2 joining an existing NBBO or setting a new NBBO. The Exchange believes the proposed new rebate will incentivize the entry on the Exchange by C2 market-makers of more aggressive SPY orders that will maintain tight spreads, benefitting both Trading Permit Holders and public investors.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt SPY-specific pricing as the Exchange already maintains product-specific pricing for other products, such as RUT and DJX.[9] Additionally, as noted above, other exchanges similarly provide for SPY-specific pricing.[10] The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for public customer SPY orders as compared to other market participants because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other

[4] The Exchange notes that when it adopted the DJX pricing table, it inadvertently omitted adding DJX to the list of excepted products for the rates provided in the standard transaction fee table. *See* Securities Exchange Release No. 85855 (May 14, 2019) 84 FR 22916 (May 20, 2019) (SR–C2–2019–010).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f.(b)(5).

[8] *See e.g.,* MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for a fee of $0.46 per contract for priority customer SPY orders that remove liquidity. *See also* Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for market-maker SPY orders that add liquidity between $0.05–$0.26 per contract.

[9] *See* Cboe C2 Options Exchange Fees Schedule, Transaction Fees.

[10] *See e.g.,* MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for a fee of $0.46 per contract for priority customer SPY orders that remove liquidity. *See also* Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for market-maker SPY orders that add liquidity between $0.05–$0.26 per contract.

exchanges.[11] The Exchange notes that the proposed fee change will be applied equally to all public customers.

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to assess higher rebates to market-makers that add liquidity as compared to other market participants, other than customers, because market-makers, unlike other market participants, take on a number of obligations, including quoting obligations, which other market participants do not have. Further, these rebates are intended to incent market-makers to quote and trade more on C2 Options, thereby providing more trading opportunities for all market participants. The Exchange notes that the proposed changes to C2 market-maker rebates for SPY options will be applied equally to all C2 market-makers. Similarly, the Exchange believes it's equitable and not unfairly discriminatory to provide C2 market-makers that are NBBO Joiners or Setters an enhanced rebate because such market participants are providing more aggressively priced liquidity in SPY options. Additionally, increased add volume order flow, particularly by liquidity providers, contributes to a deeper, more liquid market, which, in turn, provides for increased execution opportunities and thus overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all market participants by contributing towards a robust and well-balanced market ecosystem, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes the proposed change to the rebate for non-market-maker, non-customer SPY orders is also equitable and not unfairly discriminatory because it will be applied equally to all non-market-makers, non-customers.

Finally, the Exchange believes that the proposal to adopt a pricing table specific to SPY executions will further simplify the fee schedule and alleviate potential confusion in light of the proposed changes, thereby removing impediments to, and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

[11] *See* Cboe C2 Options Exchange Fees Schedule, Transaction Fees. *See also* BZX Options Fee Schedule, Fee Codes and Associated Fees.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity in SPY to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Trading Permit Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all similarly situated Trading Permit Holders equally. Overall, the proposed change is designed to attract additional SPY public customer orders that remove liquidity and SPY market-maker and non-market-maker, non-customer orders that add liquidity to the Exchange. The Exchange believes that the new C2 market-maker rebate for SPY orders that are NBBO Joiners or Setters would incentivize entry on the Exchange of more aggressive SPY orders that will maintain tight spreads, benefitting both Trading Permit Holders and public investors criteria and, as a result, provide for deeper levels of liquidity, increasing trading opportunities for other market participants, thus signaling further trading activity, ultimately incentivizing more overall order flow and improving price transparency on the Exchange.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share. Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4[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

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2020–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2020–013. 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–C2–2020–013 and should be submitted on or before October 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20476 Filed 9–16–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89836; File No. 4–764]

Self-Regulatory Organizations; MEMX, LLC; Order Declaring Effective a Minor Rule Violation Plan

September 11, 2020.

On August 5, 2020, MEMX, LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed minor rule violation plan (''MRVP'' or ''Plan'') pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for public comment on August 11, 2020.[3] This order declares the Exchange's proposed MRVP effective.[4]

The Exchange's MRVP specifies the rule violations which will be included in the Plan and will have sanctions not exceeding $2,500. Any violations which are resolved under the MRVP would not be subject to the provisions of Rule 19d–1(c)(1) of the Act,[5] which requires that a self-regulatory organization (''SRO'') promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[6] In accordance with Rule 19d–1(c)(2) under the Act,[7] the Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposed to include in its MRVP the procedures included in Exchange Rule 8.15 (''Imposition of Fines for Minor Violation(s) of Rules'') and the violations included in Rule 8.15.01 (''List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15'').[8] According to the Exchange's MRVP, under Rule 8.15(a), the Exchange may impose a fine (not to exceed $2,500) on any Member, associated person of a Member, or registered or non-registered employee of a Member, for any violation of a Rule of the Exchange which violation the Exchange shall have determined is minor in nature, as set forth in Rule 8.15.01. The Exchange may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected. In any action taken by the Exchange pursuant to Rule 8.15, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized officer of the Exchange, setting forth (i) the Rule or Rules alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange. Pursuant to paragraph (c) of Rule 8.15, if the person against whom a fine is imposed pursuant to Rule 8.15 pays such fine, that payment shall be deemed to be a waiver by of such person's right to a disciplinary proceeding under Rules 8.1 through 8.13 and any review of the matter by the Appeals Committee or by the Board. Any person against whom a fine is imposed pursuant to Rule 8.15

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 89485 (August 5, 2020), 85 FR 48577 (''Notice''). The Commission received one comment letter that was not germane to the proposal. *See* letter dated August 24, 2020, from Angela N B.

[4] Terms not otherwise defined herein are defined in the Exchange Rules.

[5] 17 CFR 240.19d–1(c)(1).

[6] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission is not considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[7] 17 CFR 240.19d–1(c)(2).

[8] The Exchange received its grant of registration on May 4, 2020, which included the rules that govern the Exchange. Contemporaneous with this submission, the Exchange filed with the Commission a rule filing that proposed a minor amendment to Rule 8.15(a) and a proposed change to Rule 8.15.01 to add Rules 4.5 through 4.16 (Consolidated Audit Trail Compliance Rules). This submission proposed the Exchange's MRVP, including those proposed changes to Rules 8.15 and 8.15.01. *See* Securities Exchange Act Release No. 89509 (August 7, 2020), 85 FR 49407 (August 13, 2020) (SR–MEMX–2020–03).

may contest such a finding pursuant to paragraph (d) of Rule 8.15 by filing with the Exchange not later than the date by which such determination must be contested (such date to be not less than 15 business days after the date of service of the written statement by the Exchange) a written response meeting the requirements provided in Rule 8.5 at which point the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13.[9]

Once MEMX's MRVP is effective, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of the disposition.

The Commission finds that the proposal is consistent with the public interest, the protection of investors, and otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[10] because the MRVP will permit the Exchange to carry out its oversight and enforcement responsibilities as an SRO more efficiently in cases where full disciplinary proceedings are not necessary due to the minor nature of the particular violation.

In declaring the Exchange's MRVP effective, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Rule 19d–1(c)(2) under the Act,[11] that the proposed MRVP for MEMX LLC, File No. 4–764, be, and hereby is, declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20475 Filed 9–16–20; 8:45 am]

BILLING CODE 8011–01–P

[9] *See,* Notice, *supra* note 3.

[10] 17 CFR 240.19d–1(c)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34006; 812–15108]

Rand Capital Corporation, et al.

September 11, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

Applicants: Rand Capital Corporation (the ''Company''), BlueArc Mezzanine Partners I, LP (the ''Existing East Propriety Fund''), Rand Capital SBIC, Inc. (the ''Existing Wholly-Owned Subsidiary''), Rand Capital Management, LLC (''BDC Adviser''), East Asset Management, LLC (''East'') and Rand Capital Credit, LLC (''RCC Adviser,'' and, together with the BDC Adviser, the ''Existing Advisers'').

Filing Dates: The application was filed on March 13, 2020, and amended on July 24, 2020, August 19, 2020 and September 4, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 6, 2020 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *agusky@emslp.com* and *pgrum@randcapital.com.*

FOR FURTHER INFORMATION CONTACT: Marc Mehrespand, Senior Counsel, at (202) 551–8453 or Trace Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) under the Act and rule 17d–1 under the Act to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Funds [1] and or one or more Affiliated Funds [2] to enter into Co-

[1] ''Regulated Funds'' means the Company, the Future Regulated Funds and the BDC Downstream Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) are an Adviser, and (c) that intends to participate in the proposed co-investment program (the ''Co-Investment Program'').

''Adviser'' means the Existing Advisers together with any future investment adviser that (i) controls, is controlled by or is under common control with the Existing Advisers, (ii) (a) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') or (b) is an exempt reporting adviser pursuant to rule 203(m) of the Advisers Act (''Exempt Reporting Adviser'') and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means at any Future Affiliated Fund, any Rand Capital Proprietary Account or any East Proprietary Account. ''Future Affiliated Fund'' means any entity (a) whose investment adviser (and sub-adviser(s), if any) are an Adviser, (b) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, (c) that intends to participate in the Co-Investment Program, and (d) that is not a BDC Downstream Fund. ''Rand Capital Proprietary Account'' means any Adviser in a principal capacity, and any direct or indirect, wholly- or majority-owned subsidiary of an Adviser that is

Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub (defined below) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. The Company is a New York corporation and operates as a diversified closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[4] The Company is managed by a Board[5] currently comprised of five persons, three of whom are Independent Directors.[6]

3. BDC Adviser, a Delaware limited liability company that is registered under the Advisers Act, serves as the investment adviser to the Company pursuant to an investment advisory agreement.

4. RCC Adviser, a Delaware limited liability company, is an Exempt Reporting Adviser and serves as investment adviser to the Existing East Proprietary Account.

5. East, a Delaware limited liability company, controls the Existing Advisers, the Company and the Existing East Proprietary Account.

6. Applicants represent that the Existing East Proprietary Account is a Georgia limited partnership and East is its sole limited partner.

7. The Existing Wholly-Owned Subsidiary is a New York corporation.

8. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

9. Applicants represent that the Existing Advisers have established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

10. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Adviser considering the opportunity for its clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies[8] and any Board-Established Criteria[9] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions.

formed in the future that, from time to time, may hold various financial assets in a principal capacity. ''East Proprietary Account'' means the Existing East Proprietary Account and any direct or indirect, wholly- or majority-owned subsidiary of East that is formed in the future that, from time to time, may hold various financial assets in a principal capacity.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] ''Wholly-Owned Investment Sub'' means an entity (i) that is a wholly-owned subsidiary of a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary (defined below), maintains a license under the SBA Act (defined below) and issues debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to the application; and (iv) (A) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) that qualifies as a real estate investment trust within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended (''Code'') because substantially all of its assets would consist of real properties. The term ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company. The Existing Wholly-Owned Subsidiary is a Wholly-Owned Investment Sub.

[8] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to such Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

11. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

12. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, such Adviser's investment committee will approve an investment amount to be allocated to each Regulated Fund and/or Affiliated Fund participating in the Potential Co-Investment Transaction. Applicants state further that, each proposed order amount may be reviewed and adjusted, in accordance with the applicable Adviser's written allocation policies and procedures, by the applicable Adviser's investment committee.[10] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[11]

13. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[12] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[13]

B. Follow-On Investments

14. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[14] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

15. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

16. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

17. Applicants propose that Dispositions[18] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding

[10] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[11] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[12] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act.

[13] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[14] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

investments in the issuer have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[19]

18. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition[20] or (ii) the securities are Tradable Securities[21] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

19. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

20. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because all of the Regulated Funds and Affiliated Funds, including the Rand Capital Proprietary Accounts and the East Proprietary Accounts, are directly or indirectly controlled by East. This is because (i) an Adviser will manage and may be deemed to control any Future Affiliated Fund; (ii) BDC Adviser manages and may be deemed to control the Company pursuant to the an investment advisory agreement; (iii) any future Regulated Fund will be managed by and may be deemed to be controlled by an Adviser; (iv) each BDC Downstream Fund[22] will be, deemed to be controlled by its BDC parent and/or its BDC parent's investment adviser; (v) the Advisers will control, be controlled by, or under common control with, the Existing Advisers; and (vii) East may be deemed to control the Existing Advisers. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds that are BDCs, including the Company and any BDC Downstream Fund in a manner described by section 57(b) and related to Future Regulated Funds that are

[19] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

[22] ''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a BDC, an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser (and sub-adviser(s), if any) are an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) that intends to participate in the Co-Investment Program.

registered investment companies in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by 57(b) or rule 17d–1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other.

4. Further, because the Wholly-Owned Investment Subs are controlled by the Regulated Funds, the Wholly-Owned Investment Subs are subject to Section 57(a)(4) (or Section 17(d) in the case of Wholly-Owned Investment Subs controlled by Regulated Funds that are registered under the Act), and thus also subject to the provisions of Rule 17d–1, and therefore would be prohibited from participating in Co-Investment Transactions.

5. In addition, because the East Proprietary Accounts, including the Existing East Proprietary Account, are controlled by East, and, therefore, may be under common control with the Company, the Advisers, and any Future Regulated Funds, the East Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the Co-Investment Program. Further, because the Rand Capital Proprietary Accounts will be controlled by an Adviser and, therefore, may be under common control with the Company, the Advisers, and any Future Regulated Funds, the Rand Capital Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the Co-Investment Program.

6. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

7. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a). The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b). When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a). If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b). If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c). After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i). The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii). the transaction is consistent with:

(A). The interests of the Regulated Fund's equity holders; and

(B). the Regulated Fund's then-current Objectives and Strategies;

(iii). the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A). The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B). any other Regulated Fund or Affiliated Fund, but not the Regulated

Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv). the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [23] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17 (e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[24] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[25]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i). the Adviser to such Regulated Fund or Affiliated Fund [26] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b). *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c). *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i). (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [27] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii). each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). the Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the

[23] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[24] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[25] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[26] Any Rand Capital Proprietary Account or East Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[27] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i). the Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii). the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c). *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i). *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [28] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b). *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i). (A) the proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[29] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii). it is a Non-Negotiated Follow-On Investment.

(c). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. Enhanced Review Follow-Ons.

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer

[28] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[29] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c). *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a). Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b). All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c). Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d). The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of each Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[30] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[30] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89834; File No. SR–NYSEArca–2020–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 5.3–E to Exempt Issuers of Certain Derivative and Special Purpose Securities From Having To Obtain Shareholder Approval Prior to the Issuance of Securities in Connection With Certain Acquisitions of the Stock or Assets of an Affiliated Company

September 11, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 28, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 5.3–E to exempt certain categories of derivative and special purpose securities from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 5.3–E(d)(9) requires issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company, in the following circumstances:

(i) If any director, officer, or substantial shareholder of the listed company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction (or series of related transactions) and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(ii) where the present or potential issuance of common stock, or securities convertible into or exercisable for common stock (other than in a public offering for cash), could result in an increase in outstanding common shares of 20% or more or could represent 20% or more of the voting power outstanding before the issuance of such stock or securities.

The Exchange proposes to exempt issuers of certain categories of derivative and special purpose securities [4] from

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange proposes to exempt the following categories of derivative and special purpose securities: Securities listed pursuant to Rules 5.2–E(h) (Unit Investment Trusts), 5.2–E(j)(3) (Investment Company Units), 5.2–E(j)(8) (Exchange-

having to comply with this requirement when they issue securities in connection with the acquisition of the stock or assets of an affiliated company in a transaction that does not require shareholder approval under Rule 17a–8 [5] (Mergers of affiliated companies) under 1940 Act (''Rule 17a–8''). In general, the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company is designed to give existing shareholders a vote on the issuance of stock that may dilute their voting or economic rights. The Exchange notes that NYSE Arca Rule 5.3–E(d)(9) is also intended to give shareholders a vote on transactions where a director, officer, or substantial shareholder of the listed company has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Due to the unique nature of 1940 Act Securities as well as the requirements under Rule 17a–8, the Exchange believes that these concerns are limited with respect to the holders of such securities. Therefore, if shareholder approval is not required under Rule 17a–8, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to obtain shareholder approval under Exchange rules which can be both time consuming and expensive.

The Exchange believes that the potential economic dilution concerns sometimes associated with a large share issuance are unlikely to be present when an issuer of a 1940 Act Security issues shares in connection with the acquisition of the stock or assets of an affiliated company. As described above, the proposed exemption will only apply to issuers of derivative and special purpose securities organized under the 1940 Act.[6] Rule 17a–8 specifies that in connection with the merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction.[7] Because the board of directors must make an affirmative determination that the merger is not dilutive to existing shareholders, the shares issued by the acquiring investment company are issued at a price equal to the fund's net asset value.[8] While the Exchange notes that the shares are issued at a fund's net asset value when the fund is registered, the requirements of Rule 17a–8 also protect against dilution when the fund to be acquired is unregistered. Specifically, Rule 17a–8(a)(2)(iii) requires that where a fund is acquiring the assets of an unregistered fund, the board have procedures in place for the valuation of assets. Such procedures must include procedures that provide for a report to be prepared by an independent evaluator to provide a valuation for assets to be acquired.

The Exchange believes that the same provisions of Rule 17a–8 that protect against economic dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board must make an affirmative decision that the transaction is in the best interest of its shareholders and that the transaction will not result in economic dilution for existing shareholders, the is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange further believes that it is appropriate to exempt an issuer of 1940 Act Securities from the shareholder approval requirements of NYSE Arca Rule 5.3–E(d)(9) in the very limited circumstance where a company issues securities in connection with the acquisition of the stock or assets of an affiliated company in a transaction that does not require shareholder approval under Rule 17a–8. In fact, Rule 17a–8 already considered whether shareholders of 1940 Act Securities should have the right to vote on a transaction that falls under this rule and enumerates circumstances when shareholder approval is required and when it is not. Specifically, Rule17a–8 exempts the acquiring company from obtaining shareholder approval in such scenario if: (i) No policy of the acquiring company that could not be changed without a vote of its outstanding voting securities is materially different from a policy of the merged company, (ii) no advisory contract between the acquiring company and any investment adviser thereof is materially different from an advisory contract between the merged company and any investment adviser thereof, except for the identity of the investment companies as a party to the contract, (iii) directors of the acquiring company, who are not interested persons of the acquiring company, and who were elected by the shareholders of the acquiring company, will comprise a majority of the directors of the merged company, who are not interested persons of the merged company, and (iv) any distribution fees (as a percentage of the company's average net assets) authorized to be paid by the merged company pursuant to a plan adopted in accordance with Rule 12b–1 under the 1940 Act are no greater than the distribution fee (as a percentage of the company's average net assets) authorized to be paid by the acquiring company, pursuant to such plan. Given that the 1940 Act already prescribes when an issuer of 1940 Act Securities must obtain shareholder approval in the context of a merger of affiliated companies, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to comply with NYSE Arca Rule 5.3–E(d)(9) when completing a transaction that does not require shareholder approval under Rule 17a–8.

As described above, the Exchange only proposes to exempt issuers of 1940 Act Securities from having to comply with NYSE Arca Rule 5.3–E(d)(9) if they are issuing shares to acquire the stock or assets of an affiliated company and such issuance would not require shareholder approval under Rule 17a–8. Notwithstanding the proposed exemption, the Exchange notes that other provisions of Exchange rules or the 1940 Act may require shareholder approval and will still apply.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[10] in particular in that it is designed to promote just and equitable principles of

Traded Fund Shares), 8.100–E (Portfolio Depositary Receipts), 8.600–E (Managed Fund Shares), 8.601–E (Active Proxy Portfolio Shares) and 8.900–E (Managed Portfolio Shares) (collectively, the ''1940 Act Securities''). Each of the aforementioned categories of derivative and special purpose securities are issued by an entity organized under the Investment Company Act of 1940 (the ''1940 Act'').

[5] 17 CRF 270.17a–8.

[6] Approximately 88% of securities listed on the Exchange are issued by investment companies registered under the 1940 Act.

[7] 17 CRF 270.17a–8.

[8] The Exchange notes that the proposing releases for Rule 17a–8 specifically contemplated that, in certain circumstances, the price paid may deviate from a fund's net asset value due to adjustments for tax purposes. *See* Investment Company Act Release No. 25259 at Footnote 26.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors, as the unique nature of 1940 Act Securities, as well as protections afforded by Rule 17a–8, means that (i) there is little risk of economic dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders are unlikely to be disenfranchised as a result of a Rule 17a–8—compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to issuers of derivative and special purpose securities that are organized under the 1940 Act that are completing a transaction that does not require shareholder approval under Rule 17a–8. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. Because the interests of shareholders in such a transaction cannot be diluted, shares issues by one investment company to acquire the stock or assets of an affiliated investment company are issued at a price equal to the acquiring fund's net asset value. Because of the safeguards embedded in Rule 17a–8, as described above, the Exchange also believes that there are reduced concerns about economic dilution when the transaction involves a merger with an affiliate unregistered fund.

The Exchange believes that the same provisions of Rule 17a–8 that protect against economic dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board must make an affirmative decision that the transaction is in the best interest of its shareholders and that the transaction will not result in economic dilution for existing shareholders, the is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

In addition to requiring the board determinations described above, Rule 17a–8 also exempts the acquiring company from having to obtain shareholder approval prior to merging with an affiliated company provided certain conditions are met. Specifically, Rule 17a–8 exempts the acquiring company from obtaining shareholder approval in such scenario if: (i) No policy of the acquiring company that could not be changed without a vote of its outstanding voting securities is materially different from a policy of the merged company, (ii) no advisory contract between the acquiring company and any investment adviser thereof is materially different from an advisory contract between the merged company and any investment adviser thereof, except for the identity of the investment companies as a party to the contract, (iii) directors of the acquiring company, who are not interested persons of the acquiring company, and who were elected by the shareholders of the acquiring company, will comprise a majority of the directors of the merged company, who are not interested persons of the merged company, and (iv) any distribution fees (as a percentage of the company's average net assets) authorized to be paid by the merged company pursuant to a plan adopted in accordance with Rule 12b–1 under the 1940 Act are no greater than the distribution fee (as a percentage of the company's average net assets) authorized to be paid by the acquiring company, pursuant to such plan.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act may require shareholder approval and will still apply.

The Exchange believes it is not unfairly discriminatory to offer the exemption only to issuers of 1940 Act Securities completing a transaction in compliance with Rule 17a–8, as opposed to all issuers of derivative and special purpose securities, because only 1940 Act Securities are subject to the requirements of the 1940 Act which offer the protections against dilution and self-dealing described herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment will not impose any burden on competition, as they simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–NYSEArca–2020–54 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–NYSEArca–2020–54. 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–NYSEArca–2020–54 and should be submitted on or before October 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20474 Filed 9–16–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89830; File No. SR–CBOE–2020–085]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Fees for a Recently Adopted New Version of the Silexx Platform

September 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 September 1, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt fees for a recently adopted new version of the Silexx platform. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt fees for a new version of the Silexx platform (''Cboe Silexx''), effective October 1, 2020. By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders,[3] and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. Historically, users could not directly route orders through any of the then-current versions of Silexx to an exchange or trading center nor is the platform integrated into or directly connected to Cboe Option's System. In 2019, the Exchange made available an additional version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange.[4] Most recently, the Exchange made a new version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options and allows authorized Users with direct access to the Exchange.[5] The Silexx front-end and back-end platforms are a software application that is installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of any version of the Silexx platform is completely optional.

The Exchange proposes to adopt fees for the recently adopted Cboe Silexx. Particularly, the Exchange proposes to adopt a monthly fee of $275 per Login Id for the first 8 Login IDs (*i.e.,* Logins Ids 1–8), a fee of $100 per each additional Login ID for the next 8 Login Ids (*i.e.,* Login Ids 9–16), and provide that each Login Id thereafter would be free (*i.e.,* 17+ Login Ids). The Exchange proposes to provide that the fee will also be waived for the first month for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.

[4] See Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061).

[5] See Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR–CBOE–2020–040).

any individual market participant. The waiver will apply to the month the Login Id is first purchased.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that its proposed fees are reasonable and appropriate as it is competitive with similar products available throughout the market, including a similar front-end order entry system offered by the Exchange (*i.e.,* the PULSe workstation), the current Silexx platforms and a similar front-end order entry system offered by Nasdaq ISE (*i.e.,* ISE's PrecISE terminals),[11] Additionally, as discussed, use of Cboe Silexx is discretionary and not compulsory. Indeed, Users can choose to route orders, including to Cboe Options, without the use of the platform. The Exchange is making the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative that will be offered by the Exchange. Moreover, the Exchange notes market participants have had the ability to use and learn the new Silexx platform at no charge for the last six months. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because they apply to all market participants uniformly.

The Exchange believes the proposed one-month fee waiver for all new individual users of Cboe Silexx is reasonable as such users will not have to pay the Cboe Silexx fee for one month and because it also acts as an incentive for individual users to start using the Silexx platform as a trading tool on their trading desks. Moreover, the Silexx Fees Schedule already provides new user firms a one-month fee waiver of Silexx platform fees.[12] The proposal also gives new users additional time to become familiar with and fully acclimated to all of the functionality that Cboe Silexx offers. Additionally, as Cboe Silexx is a relatively new platform, the Exchange wishes to incentivize and encourage its use. The proposed 1-month fee waiver applies to all new individual users uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates to an optional platform. All new market participants are entitled to a month-fee waiver, and all current users have been able to use Cboe Silexx for the past six months at no charge. The proposed fee and waiver will apply to similarly situated participants uniformly, as described in detail above. Also as discussed, the use of the platform will be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. The proposed platform is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than the Cboe Silexx platform, they may simply use those products instead. Use of such functionality is completely voluntary.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. Additionally, Cboe Silexx is similar to types of product that are widely available throughout the industry, including from some exchanges, at similar prices.[13] To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4[15] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[6] For example, if an individual User subscribes to a Cboe Silexx Login ID on October 15th, the Login ID fee would be waived for the month of October only.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Silexx Fees Schedule, which assesses between $200–$600 per month for the current Silexx platforms, other than FLEX which is assessed no fee. *See also* Cboe Options Fees Schedule, which provides for a PULSe workstation monthly fee of $400 per user per TPH for each of the 1st 15 logins and $100 per month for each additional login and $400 per month per user for non-TPHs and *see* Nasdaq ISE's Pricing Schedule, Section 7, which provides for a PrecISE Trade Terminal monthly fee of $350 per user for each of the 1st 10 users and $100 per month for each additional user.

[12] *See* Silexx Fees Schedule.

[13] *See* supra note 14.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–085 and should be submitted on or before October 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20472 Filed 9–16–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89832; File No. SR–NYSE–2020–74]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify the Exchange's Source of Data Feeds From MIAX PEARL, LLC.

September 11, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 3, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify the Exchange's source of data feeds from MIAX PEARL, LLC (''MIAX PEARL'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(e) to specify that, with respect to MIAX PEARL, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The Exchange will not have a secondary source for data from MIAX PEARL.

The Exchange proposes that this proposed rule change would be operative on the day that MIAX PEARL launches operations as an equities exchange, which is currently expected on September 25, 2020.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37(e) to include the data feed source for MIAX PEARL will ensure that Rule 7.37 correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_08182020.pdf.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will ensure that the rule change becomes operative on or before the day that MIAX PEARL launches operations as an equities exchange, thereby providing transparency to market participants regarding the source of MIAX PEARL quotation and trade data the Exchange will use for order handling, order execution, order routing, and regulatory compliance. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2020–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–74 and should be submitted on or before October 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20477 Filed 9–16–20; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89831; File No. SR–CBOE–2020–084]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule With Respect to Its Strategy Fee Cap

September 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 September 1, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule with respect to its strategy fee cap. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its strategy fee cap, effective September 1, 2020.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Trading Permit Holders (''TPHs'') to increase order flow of certain qualifying orders.

Currently, pursuant to footnote 13 of the Fees Schedule, Market-Maker, Clearing TPH, Joint-Back Office (''JBO''), broker-dealer and non-TPH market-maker transaction fees are capped at (1) $1,000 for all (i) merger strategies and (ii) short stock interest strategies and at (2) $700 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class for options on equities, ETFs and ETNs. Such transaction fees for these strategies are further capped at $25,000 per month per initiating TPH or TPH organization (excluding Clearing TPHs). Additionally, surcharge fees are not included in the calculation of the $1,000 per day per class fee cap or the $25,000 per month fee cap for merger and short stock interest strategies.

The Exchange proposes to amend footnote 13 to provide that market-maker, Clearing Trading Permit Holder, JBO participant, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at $0.00 for all merger, short stock interest, reversal, conversion and jelly roll strategies executed in open outcry on the same trading day in the same option class across all symbols. Essentially, the proposed rule change removes the three different strategy fee cap amounts, including the language in connection with calculation of surcharges and the caps, and, instead, applies a $0.00 cap for strategies executed in open outcry in all classes. In other words, all strategies transacted on the trading floor will be free.[4] The proposed rule change also clarifies that the proposed $0.00 cap applies to all symbols by denoting footnote 13 at the top of ''Rate Table—All Products Excluding Underlying Symbol List A''[5] and ''Rate Table—Underlying Symbol List A''. The proposed change is designed to incentivize Trading Permit Holders to increase the number of strategy orders executed in open outcry.

Additionally, the proposed rule change to footnote 13 adds that the strategies defined in footnote 13 will not be eligible for an ORS/CORS subsidy. Participating TPHs or Participating Non-Cboe TPHs in the ORS and CORS Programs receive a payment from the Exchange for every executed contract routed to the Exchange through their system in certain classes. The Exchange notes that program participants do not receive payment for contracts executed in the Automated Improvement Mechanism (''AIM'') or for contracts executed as QCC orders because these contracts already have an opportunity to earn various rebates and discounts. Similarly, contracts executed as defined strategies on the trading floor would now have other opportunities to earn a full discount pursuant to proposed footnote 13.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and furthers the requirements of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. As stated above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange's trading floor, which the Exchange believes would enhance market quality to the benefit of all TPHs.

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary (August 25, 2020), available at *https://markets.cboe.com/us/options/market_statistics/*.

[4] The Exchange notes that it maintains the current cap language so that it may raise the cap, if it chooses, in a future rule filing without causing any potential confusion.

[5] The proposed change moves the current location of the footnote 13 notation from inside the table's heading to the list of footnotes appended to ''Options Transactions'' directly above the table.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

The Exchange believes that its proposed adoption of a $0.00 strategy order cap for contracts executed in open outcry is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. As noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges, and the Exchange itself, offer fees and credits in connection with transactions in open outcry [8] or strategy executions,[9] as the Exchange now proposes. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. To respond to this competitive marketplace, the Exchange has established incentives to facilitate the execution of orders via open outcry, which promotes price discovery on the public markets. To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Particularly, the Exchange believes that the proposed $0.00 strategy cap for all options executed in open outcry is reasonable because it is designed to incentivize Trading Permit Holders to increase their strategy orders submitted to and executed on the Exchange's trading floor. The Exchange offers a hybrid market system and aims to balance incentives for its Trading Permit Holders to continue to contribute to deep liquid markets for investors on both its electronic and open outcry platforms. As such, the Exchange believes the proposed strategy caps for executions in open outcry is a reasonable means to continue to encourage open outcry liquidity, and the Exchange provides other opportunities in its Fees Schedule for Trading Permit Holders to receive reduced fees or enhanced rebates for orders executed electronically.[10] The Exchange notes that all market participants stand to benefit from any increase in volume transacted on the trading floor, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange believes the proposed rule change is an equitable allocation of fees because the $0.00 cap applies to all strategy orders executed on the trading floor equally and, in addition to this, because the Exchange believes that facilitating the execution of orders via open outcry encourages and supports increased liquidity and execution opportunities via open outcry, which functions as an important price-improvement mechanism. Likewise, the proposed rule change is not unfairly discriminatory because the proposed strategy cap is uniformly available to all similarly situated market participants, that is, all market-makers, Clearing Trading Permit Holders, JBO participants, broker-dealers and non-Trading Permit Holders that execute strategies in any class in open outcry will be eligible to for the cap, thus, will equally not be assessed a charge on such orders.

Additionally, the Exchange believes that the proposal to not apply an ORS/CORS subsidy to strategy orders that are eligible for the $0.00 cap is reasonable, equitable and not unfairly discriminatory because such strategy orders will already have the opportunity to receive a full discount pursuant to proposed footnote 13 and all such strategy orders will equally not receive an ORS/CORS subsidy. This is consistent with the manner in which ORS/CORS program participants currently do not receive payment for contracts executed in AIM or as QCC orders as these transactions also already have an opportunity to earn various rebates and discounts.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to auctions of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [11]

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes (both the strategy cap as well as the non-application of ORS/CORS subsidies for eligible strategy orders) will apply uniformly to all market-makers, Clearing Trading Permit Holders, JBO participants, broker-dealers and non-Trading Permit Holders that execute strategies in open outcry, respectively. As described above, the Exchange aims to offer a hybrid market system in which it balances incentives for its Trading Permit Holders to contribute to deep liquid markets for investors on both its electronic and open outcry platforms. As such, the proposal will continue to encourage Trading Permit Holders to provide liquidity on the Exchange's trading floor, while Trading Permit Holders may continue to take other opportunities afforded by the Fees Schedule to receive reduced fees or enhanced rebates for their orders executed electronically. The proposed fee changes serve to enhance order flow directed to open outcry for execution, and the resulting increase in volume transacted on the trading floor promotes

[8] *See* NYSE American Options Fee Schedule, Section III(E), "Floor Broker Incentive and Rebate Programs"; *and* Cboe Options Fees Schedule, "Floor Broker ADV Discount"; footnote 8, which waives the transaction fee for public customer ("C" capacity code) orders in all ETF and ETN options that are executed in open outcry; and footnote 11, which provides that for facilitation orders executed in open outcry, Cboe Options will assess no Clearing Trading Permit Holder Proprietary transaction fees.

[9] *See e.g.,* BOX Options Market LLC ("BOX") fee schedule, Section II.D (Strategy QOO Order Fee Cap and Rebate). BOX caps fees for each participant at $1,000 for strategies executed on the same trading day, and Floor Brokers, particularly, are eligible to receive a $500 rebate per customer for presenting certain Strategy QOO Orders on the Trading Floor; *see also* NYSE American Options Fee Schedule, Section I(J), "Strategy Execution Fee Cap", which assesses a $1,000 cap on transaction fees for all options Strategy Executions on the same trading day involving reversals and conversions, box spreads, short stock interest spreads, merger spreads, and jelly rolls.

[10] *See e.g.,* Cboe Options Fees Schedule, "Volume Incentive Program" and footnote 36, which credits each Trading Permit Holder the per contract amount resulting from each public customer ("C" capacity code) order transmitted by that Trading Permit Holder which is executed electronically on the Exchange (with some exceptions).

[11] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants, which, in turn, benefits all market participants.

The Exchange also does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, competing options exchanges, and the Exchange, currently have substantially similar fees in place in connection with strategy orders [12] and orders executed in open outcry.[13] Additionally, and as previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 16% of the market share.[14] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[16] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–084 and should be submitted on or before October 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20473 Filed 9–16–20; 8:45 am]

BILLING CODE 8011–01–P

[12] *See supra* note 9.

[13] *See supra* note 8.

[14] *See supra* note 3.

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89833; File No. SR–NYSEAMER–2020–67]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37E To Specify the Exchange's Source of Data Feeds From MIAX PEARL, LLC

September 11, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934

[1] 15 U.S.C. 78s(b)(1).

(''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 3, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37E to specify the Exchange's source of data feeds from MIAX PEARL, LLC (''MIAX PEARL'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37E, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37E(d) to specify that, for MIAX PEARL, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance.[4] The Exchange will not have a secondary source for data from MIAX PEARL.

The Exchange proposes that this proposed rule change would be operative on the day that MIAX PEARL launches operations as an equities exchange, which is currently expected on September 25, 2020.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37E(d) to include the data feed source for MIAX PEARL will ensure that Rule 7.37E correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will ensure that the rule change becomes operative on or before the day that MIAX PEARL launches operations as an equities exchange, thereby providing transparency to market participants regarding the source of MIAX PEARL quotation and trade data the Exchange will use for order handling, order execution, order routing, and regulatory compliance. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange also proposes an additional non-substantive change to correct a typographical error in the table.

[5] *See https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_08182020.pdf.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [13] of the Act 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–NYSEAMER–2020–67 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–NYSEAMER–2020–67. 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–NYSEAMER–2020–67 and should be submitted on or before October 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20478 Filed 9–16–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENTS: 85 FR 51106, August 19, 2020 and 85 FR 53898, August 31, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETINGS: Wednesday, September 2, 2020 and September 16, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, September 16, 2020 at 10:00 a.m. has been postponed to Wednesday, September 23, 2020 at 10:00 a.m. The following additional matter, previously scheduled for consideration on September 2, 2020, will also be considered during the Open Meeting:

- The Commission will consider whether to adopt amendments to the Commission's rules implementing its whistleblower program that would enhance claim processing efficiency, and clarify and bring greater transparency to the framework used by the Commission in exercising its discretion in determining award amounts, as well as otherwise address specific issues that have developed during the whistleblower program's history. The amendments reflect the Commission's experience administering the program over the past decade. The Commission will also consider whether to adopt interpretive guidance concerning the term ''independent analysis'' in the Commission's rules implementing its whistleblower program.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: September 15, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–20679 Filed 9–15–20; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), Department of Transportation, Utah Department of Transportation (UDOT).

ACTION: Notice of limitations on claims for judicial review of actions by UDOT and other Federal agencies.

SUMMARY: The FHWA, on behalf of UDOT, is issuing this notice to announce actions taken by UDOT that are final Federal agency actions. The final agency actions relate to a proposed highway project, improvements to the Parley's Interchange at Interstate 80 (I–80) and Interstate 215 (I–215) in Salt Lake County, State of Utah. Those actions grant licenses, permits and/or approvals for the project. The UDOT's Record of Decision provides details on the Selected Alternative for the proposed improvements.

DATES: By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(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 February 16, 2021. 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: Naomi Kisen, Environmental Program Manager, UDOT Environmental Services, P.O. Box 143600, Salt Lake City, UT 84114; (801)-965–4000; email:*nkisen@utah.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: Effective January 17, 2017, FHWA assigned to UDOT certain responsibilities of FHWA for environmental review, consultation,

and other actions required by applicable Federal environmental laws and regulations for highway projects in Utah, pursuant to 23 U.S.C. 327. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 327 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the Parley's Interchange I–80/I–215 Eastside project in the State of Utah.

On August 11, 2020, UDOT approved a Final Environmental Impact Statement (EIS) and Record of Decision (ROD) for Parley's Interchange I–80/I–215 Eastside, Salt Lake County, Utah, Project No. S–R299(260). In the ROD, UDOT approved Alternative B (the Selected Alternative) as described in the EIS. The approved project consists of highway improvements to meet projected traffic demands and to improve public safety at the Parley's Interchange (I–80/I–215 eastside interchange) in Salt Lake County, Utah. The primary purposes of the project are to improve the level of service (LOS) of the interchange to LOS D or better in the 2050 design year; to improve overall mobility by reducing travel delays through the interchange as compared to no-action conditions; and to improve safety by addressing obsolete design elements and alleviating traffic backup into the main and auxiliary lanes of I–80 and I–215.

The highway improvements approved in the ROD generally consist of the removal, replacement and/or modification of ramps and the addition or modification of travel lanes within an interchange area including and bounded by the I–80/2300 East interchange on the west, the I–215/3300 South interchange on the south, the Parley's Drive/Wilshire Drive and the Foothill Drive/Stringham Avenue intersections on the north, and the I–80 westbound-to-I–215 southbound ramp near the mouth of Parley's Canyon on the east. The project is included in Needs Phase 1/Financially Constrained Phase 2 (Project ID R–S–209) of the Wasatch Front Regional Council's *2019–2050 Regional Transportation Plan.*

The actions by UDOT, and the laws under which such actions were taken, are described in the EIS and the ROD and other documents in the UDOT project records. The EIS and ROD are available for review by contacting UDOT at the address provided above. In addition, these documents can be viewed and downloaded from the project website at *www.parleyseis.com.*

This notice applies to the EIS, the ROD, the NHPA Section 106 review, the Endangered Species Act determination, the Section 4(f) determination, the Section 6(f) Land and Water Conservation Act determination, the noise review and noise abatement determination, the air quality conformity determinations, and all other UDOT and Federal agency decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. General: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; MAP–21, the Moving Ahead for Progress in the 21st Century Act [Pub. L. 112–141].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Section 6(f) of the Land and Water Conservation Fund Act [54 U.S.C. 200305]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: The Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; The Bald and Golden Eagle Protection Act [16 U.S.C. 668].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(M), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. Noise: Federal-Aid Highway Act of 1970, Public Law 91–605 [84 Stat. 1713]; [23 U.S.C. 109(h) & (i)].

10. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (*l*)(1).

Issued on: September 10, 2020.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2020–20548 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2020–0012]

Surface Transportation Project Delivery Program; Utah Department of Transportation Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal NEPA responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during

each of the first 4 years of State participation to ensure compliance with program requirements. This notice announces and solicits comments on the third audit report for the Utah Department of Transportation (UDOT).

DATES: Comments must be received on or before October 19, 2020.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Lana Lau, Office of Project Development and Environmental Review, (202) 366–2052, *Lana.Lau@dot.gov,* or Mr. Jay Payne, Office of the Chief Counsel, (202) 366–4241, *James.o.Payne@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The UDOT published its application for NEPA assumption on October 9, 2015, and made it available for public comment for 30 days. After considering public comments, UDOT submitted its application to FHWA on December 1, 2015. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that UDOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on November 16, 2016, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and UDOT considered comments and proceeded to execute the MOU. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. This section also requires FHWA to make the audit available for public comment. The FHWA published the first audit report of UDOT compliance on September 17, 2018, and published the second report on November 13, 2019. This notice announces the availability of the third audit report for UDOT and solicits public comments.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program; Draft FHWA Audit of the Utah Department of Transportation; July 1, 2018–June 30, 2019

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) third audit of the Utah Department of Transportation's (UDOT) National Environmental Policy Act (NEPA) review responsibilities and obligations that FHWA has assigned and UDOT has assumed pursuant to 23 U.S.C. 327. Throughout this report, FHWA uses the term ''NEPA Assignment Program'' to refer to the program codified at 23 U.S.C. 327. Pursuant to 23 U.S.C. 327, UDOT and FHWA executed a memorandum of understanding (MOU) on January 17, 2017, to memorialize UDOT's NEPA responsibilities and liabilities for Federal-aid highway projects and certain other FHWA approvals in Utah. The section 327 MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EA), environmental impact statements (EIS), and non-designated documented categorical exclusions (DCE). A separate MOU, pursuant to 23 U.S.C. 326, authorizes UDOT's environmental review responsibilities for other categorical exclusions (CE), commonly known as CE Program Assignment. This audit does not cover the UDOT's CE Program Assignment MOU responsibilities and projects.

As part of FHWA's review responsibilities under 23 U.S.C. 327, FHWA formed a team (the ''Audit Team'') in June 2019 to plan and conduct an audit of NEPA responsibilities UDOT assumed. The Audit Team conducted an on-site review during the week of October 7 to October 10, 2019. Prior to the on-site visit, the Audit Team reviewed UDOT's NEPA project files, UDOT's response to FHWA's pre-audit information request (PAIR), UDOT's NEPA Assignment Self-Assessment Report, UDOT's NEPA Quality Assurance/Quality Control (QA/QC) Guidance, and UDOT's NEPA Assignment Training Plan. The Audit Team conducted interviews with four members of UDOT central office staff, three of UDOT's legal counsel (one Assistant Attorney General (AG) assigned to UDOT and two outside counsel), and seven staff members from the U.S. Army Corps of Engineers (USACE) as part of this on-site review.

Overall, the Audit Team found that UDOT continues to successfully carry out its DCE, EA, and EIS project review responsibilities. In the first and second audits, the FHWA Audit Team observed inconsistent understanding of QA/QC procedures among UDOT staff and lack of adherence to its QA/QC procedures. In the third audit, the Audit Team found that UDOT has made efforts to respond to FHWA findings of the second audit, including improving document management and QA/QC procedures. The Audit Team also found that UDOT issued an environmental document without a final legal sufficiency finding, and observed that there were some ways UDOT could improve their training.

The Audit Team identified one non-compliance observation, one observation, and several successful practices. Overall, UDOT has carried out the environmental responsibilities it

assumed through the MOU and the application for the NEPA Assignment Program, and as such the Audit Team finds UDOT is substantially compliant with the provisions of the MOU.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects and certain FHWA approvals. Under 23 U.S.C. 327, a State that assumes these Federal responsibilities becomes solely responsible and solely liable for carrying them out. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA and other related environmental laws. Examples of responsibilities UDOT has assumed in addition to NEPA include section 7 consultation under the Endangered Species Act and consultation under section 106 of the National Historic Preservation Act.

Following this third audit, FHWA will conduct one more annual audit to satisfy provisions of 23 U.S.C. 327(g) and Part 11 of the MOU. Audits are the primary mechanism through which FHWA may oversee UDOT's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal laws and policies, evaluating UDOT's progress toward achieving the performance measures identified in MOU Section 10.2, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present the results of each audit in a report and make it available for public comment in the **Federal Register**.

The Audit Team consisted of NEPA subject matter experts from the FHWA Utah Division, as well as additional FHWA Division staff from California, Georgia, Alaska, and FHWA Headquarters. These experts received training on how to evaluate implementation of the NEPA Assignment Program.

Scope and Methodology

The MOU (Part 3.1.1) states that ''[p]ursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and UDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* with respect to the highway projects specified under subpart 3.3. This assignment includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for highway projects such as 23 U.S.C. 139, 40 CFR parts 1500–1508, DOT Order 5610.1C, and 23 CFR 771 as applicable.'' Also, the performance measure in MOU Part 10.2.1(A) for compliance with NEPA and other Federal environmental statutes and regulations commits UDOT to maintaining documented compliance with requirements of all applicable statutes and regulations, as well as provisions in the MOU.

The Audit Team conducted an examination of UDOT's NEPA project files, UDOT's responses to the PAIR, and UDOT's self-assessment. The audit also included interviews with staff and reviews of UDOT policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: Program management; documentation and records management; QA/QC; legal sufficiency; training; and performance measurement.

The focus of the audit was on UDOT's process and program implementation. Therefore, while the Audit Team reviewed project files to evaluate UDOT's NEPA process and procedures, the Audit Team did not evaluate UDOT's project-specific decisions to determine if they were, in FHWA's opinion, appropriate or not. The Audit Team reviewed 11 NEPA Project files with DCEs, EAs, and EISs, representing all projects with decision points or other actionable items between July 1, 2018, and June 30, 2019. The Audit Team also interviewed environmental staff in UDOT's headquarters office.

The PAIR consisted of 26 questions about specific elements in the MOU. The Audit Team used UDOT's response to the PAIR to develop specific follow-up questions for the on-site interviews with UDOT staff.

The Audit Team conducted four in-person interviews with UDOT environmental staff, one in-person interview with seven staff members of the USACE, two phone interviews with UDOT's outside legal counsel, and one phone interview with legal counsel from the Utah Attorney General's office.

Throughout the document reviews and interviews, the Audit Team verified information on the UDOT NEPA Assignment Program including UDOT policies, guidance, manuals, and reports. This included the NEPA QA/QC Guidance, the NEPA Assignment Training Plan, and the NEPA Assignment Self-Assessment Report.

The Audit Team compared the procedures outlined in UDOT environmental manuals and policies to the information obtained during interviews and project file reviews to determine if there were discrepancies between UDOT's performance and documented procedures. The Audit Team documented observations under the six NEPA Assignment Program topic areas. Below are the audit results.

Observations and Successful Practices

This section summarizes the Audit Team's observations of UDOT's NEPA Assignment Program implementation, including successful practices UDOT may want to continue or expand. Successful practices are positive results FHWA would like to commend UDOT for developing. These may include ideas or concepts that UDOT has planned but not yet implemented. Observations are items the Audit Team would like to draw UDOT's attention to, which may benefit from revisions to improve processes, procedures, or outcomes. The UDOT may have already taken steps to address or improve upon the Audit Team's observations, but at the time of the audit they appeared to be areas where UDOT could make improvements. This report addresses all six MOU topic areas as separate discussions. Under each area, this report discusses successful practices followed by observations.

This audit report provides an opportunity for UDOT to implement actions to improve their program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of Audit #4. The fourth audit report will include a summary discussion that describes progress since the last audit.

Program Management

Successful Practices

During the kickoff meeting, the Audit Team learned that UDOT has placed the Environmental Services Division under Program Development rather than Project Development. This re-organization helps environmental services align their work with planning staff. The UDOT described their interest in advancing a linking planning and environment approach related to their corridor planning process. The UDOT plans to pilot this approach on some corridors studies. Implementing this linking planning and environment approach could help address new environmental requirements and initiatives to accelerate project delivery. The FHWA and UDOT jointly discussed the opportunity and potential benefits that could result from hosting a peer exchange on this subject. In interviews

with the USACE, the Audit Team learned that they have had recent discussions with UDOT about this type of approach.

Within the last auditing period, UDOT initiated bi-monthly meetings with USACE to discuss upcoming projects. Early coordination with interested agencies can be effective in early identification and resolution of issues, and help to accelerate project delivery. The USACE supports continuing these early coordination efforts. In addition, USACE noted that project managers do a good job of documenting discussions in meetings and sending project-specific meeting notes to them for review and concurrence.

Through interviews with USACE, the Audit Team learned that UDOT consistently monitors the effectiveness of its wetland mitigation as required for permits issued by USACE under Section 404 of the Clean Water Act, and sends timely and complete monitoring reports to the USACE.

The UDOT uses varying methods of communication for its public involvement, which UDOT customizes to the context of each project and the surrounding community. Communication methods include, but are not limited to, one-on-one discussions with the public, emails and phone calls UDOT receives from the public through project websites, neighborhood gatherings, and placing door hangers throughout communities. Public involvement plans evolve throughout the NEPA process, and UDOT environmental and public involvement staff meet as a team to decide how to address public concerns as they arise. Through interviews, the Audit Team learned that UDOT is exploring the use of virtual public involvement strategies on some of its projects, such as the use of videos and mapping tools, as a means of further enhancing public engagement.

Documentation and Records Management

Successful Practices

The UDOT continues to improve implementation of its project file system. The UDOT uses ProjectWise as its environmental file system of record for NEPA Assignment Program projects. The folder structure in ProjectWise outlines the potential components of a complete project file that consultants and staff should populate, and UDOT's Environmental Document File Management guidance explains methods for organizing project files. In addition, the Environmental Performance Manager reviews project folders in ProjectWise to ensure that all project files are organized in accordance with the file structure. These measures have noticeably improved the organization and completeness of project files since the first two audits.

Quality Assurance/Quality Control

Successful Practices

The Audit Team learned through the PAIR response and interviews that, in response to Audit #2, UDOT has revised the Environmental Document Review Tool to differentiate requirements for EAs and EISs. The UDOT has also created a new checklist for QA/QC. In interviews, UDOT staff recognized that they may need to further revise procedures to ensure documentation is complete, and stated that they are committed to continuing to revise and implement their process to document legal sufficiency findings on all documents requiring findings in accordance with UDOT's Manual of Instruction (MOI) and QA/QC plan. The UDOT staff's weekly project meetings, as well as their biweekly meetings to talk about issues that arise in the environmental program, are ways they can continue to refine their processes.

Legal Sufficiency

Successful Practice

The UDOT Environmental Managers works directly with outside counsel. The UDOT Environmental Managers, an Assistant AG, and outside counsel hold quarterly meetings during which UDOT apprises counsel of upcoming project reviews and anticipated review deadlines. These quarterly meetings are one of UDOT's strategies for keeping the Assistant AG assigned to UDOT apprised of all communications between UDOT staff and outside counsel.

Training

Observation #1

The UDOT continues to update its training plan on an annual basis, as required under Section 12.2 of the MOU. During the audit period UDOT provided its staff 12 training opportunities on NEPA and other environmental requirements, in accordance with the training plan. Section 12.2 of the MOU states that ''UDOT and FHWA, in consultation with other Federal agencies as deemed appropriate, will assess UDOT's need for training and develop a training plan.'' During interviews, however, USACE, staff stated they have not had the opportunity to provide input on UDOT's training plan. The USACE expressed that their staff may benefit from training to better understand UDOT's highway design standards, requirements, and policies. Interagency discussions regarding training needs may identify opportunities for cross-training with the potential to improve interagency communication and coordination, and lead to more efficient permit review and consultation processes.

Performance Measures

Successful Practices

The UDOT's self-assessment documented the performance management details of the NEPA Assignment Program in Utah resulted in a reduction in the time needed to complete DCEs, EAs, and EISs. The UDOT's average time to complete environmental documents is 7 months for DCEs, 24 months for EAs, and 37 months for EISs. Although these data are based on a limited number of completed UDOT NEPA reviews since January 2017, UDOT's initial timeliness results are promising.

The UDOT regularly updates their MOI to continuously improve their policies and procedures. During this audit period, UDOT updated their MOI in September 2018. The UDOT has polled resource agencies every year to get feedback on their performance. The UDOT's self-assessment documents that, although they had a lower response rate to their annual resource agency poll this year (24 percent) compared to last year (50 percent), the overall evaluation rating is 4 percent higher than the ratings prior to NEPA assignment. The UDOT recognized that the low response rate may be due to timing (UDOT sent the surveys in the summer and allowed 2 weeks for responses). In interviews with the USACE, the Audit Team heard that the distribution method may also be a factor. The USACE suggested that UDOT find a way to give the survey more visibility (*e.g.,* discuss it at the bimonthly meeting, phone call in advance of the email, have it come from someone they work with regularly).

Non-Compliance Observation

Non-compliance observations are instances where the Audit Team found UDOT was out of compliance or deficient in proper implementation of a Federal regulation, statute, guidance, policy, the terms of the MOU, or UDOT's own procedures for compliance with the NEPA process. Such observations may also include instances where UDOT has failed to maintain technical competency, adequate personnel, and/or financial resources to

carry out the assumed responsibilities. Other non-compliance observations could suggest a persistent failure to adequately consult, coordinate, or consider the concerns of other Federal, State, Tribal, or local agencies with oversight, consultation, or coordination responsibilities. The FHWA expects UDOT to develop and implement corrective actions to address all non-compliance observations.

The following non-compliance observation relates to UDOT not complying with the State's environmental review procedures.

Non-Compliance Observation #1—Issuing a Document Without Final Legal Sufficiency Finding

As noted in UDOT's Self-Assessment and confirmed through audit interviews and project file reviews, the Audit Team learned that in the case of one project's individual Section 4(f) evaluation, while outside counsel reviewed and commented on the draft evaluation prior to its release, the project file contained no documentation demonstrating that the required legal sufficiency review was completed pursuant to 23 CFR 771.125(b) and/or 23 CFR 774.7(d) prior to UDOT's approval of the evaluation. This was also not in accordance with UDOT's QA/QC plan, Section 4.1.B, which requires the reviewing attorney provide the Environmental Program Manager with written documentation that the legal sufficiency review has been completed. The UDOT's response to the draft audit report indicated that they have since implemented a standard checklist form, to be completed by legal counsel, to document their project review to clarify the documentation of legal sufficiency reviews.

Next Steps

The FHWA provided this draft audit report to UDOT for a 30-day review and comment period. The Audit Team considered UDOT comments in developing this draft audit report. The FHWA will publish a notice in the **Federal Register** for a 30-day comment period in accordance with 23 U.S.C. 327(g)(2)(A). No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). Once finalized, FHWA will publish the final audit report in the **Federal Register**.

[FR Doc. 2020–20530 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0286]

Parts and Accessories Necessary for Safe Operation; Robert Bosch, LLC and Mekra Lang North America, LLC Application for an Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant a limited 5-year exemption to Robert Bosch, LLC and Mekra Lang North America, LLC (Bosch and Mekra Lang) to allow motor carriers to operate commercial motor vehicles (CMVs) with the companies' CV (Commercial Vehicle) Digital Mirror System installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective September 17, 2020 and ending September 17, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–0676; *luke.loy@dot.gov.*

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations. The on-line Federal document management system is available 24 hours each day, 365 days each year.

The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Bosch and Mekra Lang Application for Exemption

Bosch and Mekra Lang applied for an exemption from 49 CFR 393.80(a) to allow its CV Digital Mirror System to be installed as an alternative to the two rear-vision mirrors required on CMVs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety Administration's (NHTSA) standards for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard [FMVSS] No. 111). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more.

The CV Digital Mirror System consists of multiple digital cameras firmly

mounted high on the exterior of the vehicle, enclosed in an aerodynamic package that provides both environmental protection for the cameras and a mounting location for optimal visibility. Each camera has proprietary video processing software that presents a clear, high-definition image to the driver by means of a monitor firmly mounted to the left and right A-pillar of the CMV, *i.e.,* the structural member between the windshield and door of the cab. Bosch and Mekra Lang explain that attaching the monitors to the A-pillars avoids the creation of additional blind spots while eliminating the blind spots associated with conventional mirrors. Bosch and Mekra Lang state that its CV Digital Mirror System meets or exceeds the visibility requirements provided in FMVSS No. 111 based on the following factors:

- The cameras and screens are securely mounted to ensure that vibration does not adversely affect field of vision or cause the driver to misinterpret images.
- The system tracks the end of the trailer and pans the camera's view to ensure that the trailer's end remains in view while it is in motion.
- The left and right video channels are processed independently so that a failure of one camera or one monitor does not affect the camera or monitor on the opposite side.
- The system reduces glare from ambient light, provides color night vision, and uses lowlight functionality.
- The screen uses anti-glare, anti-reflection, and anti-fingerprinting coating to keep the screens readable in a variety of environmental conditions.
- The system's ergonomics are such that it requires reduced upper-body range of motion, thereby reducing driver fatigue.
- The system's fixed-mount design eliminates the need for aim adjusting for different drivers.
- Polarization of the screen is aligned with that in polarized sunglasses so that the screen remains visible to operators using such sunglasses.

The exemption would apply to all CMV operators driving vehicles with the CV Digital Mirror System. Bosch and Mekra Lang believe that mounting the system as described would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Request for Comments

FMCSA published a notice of the application in the **Federal Register** on January 30, 2020, and asked for public comment (85 FR 5534). The Agency received 3 comments, from the American Bus Association (ABA) and 2 individuals.

ABA supports granting the application, stating:

> Camera-based visibility systems or CBVSs, like the CV Digital Mirror System technology, are vehicle technology advancements ABA believes should be deployed to improve safety of CMV operations. Such systems are currently being installed and tested by equipment manufacturers in limited capacity; however, to ascertain real-world viability, equipment manufacturers need to deploy these systems for use in actual commercial operations. As with FMCSA's decision to grant an exemption to Stoneridge, Inc. for use of its MirrorEye Camera Monitor System (see Docket No. FMCSA–2018–0141, published February 21, 2019), and Vision Systems North America for its SmartVision system (see Docket No. FMCSA–FMCSA–2019–0159, published January 15, 2020) in place of mirrors[, the CV Digital Mirror System] will achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

In addition, ABA stated that when compared to traditional mirrors, the CV Digital Mirror System provides additional visibility benefits including (1) anti-glare, (2) improved visibility at night and during adverse weather conditions, and (3) elimination of blind spots by providing a broader field of vision around the vehicle. ABA noted that the improvements in driver visibility can lead to enhanced maneuverability in backing up or turning a large vehicle. ABA also stated that eliminating the side mirrors may also provide fuel efficiency gains and carbon emission reductions, and may assist in reducing actions that lead to increased driver fatigue such as head and eye movements. In addition to noting that the exemption would be consistent with FMCSA's decision to grant exemptions to Stoneridge, Inc. and Vision Systems for similar systems, ABA also stated that granting the exemption is consistent with recent activities by NHTSA relating to possible revisions to FMVSS No. 111. Specifically, NHTSA published a notice and request for public comment on August 28, 2019 (84 FR 45209), on a proposed collection of information relating to a multi-year research effort to learn about drivers' use of camera-based systems designed to replace traditional outside rearview mirrors. Initial research will focus on light vehicles, and be followed by research examining camera-based visibility systems on heavy trucks. Additionally, NHTSA published an advance notice of proposed rulemaking on October 10, 2019 (84 FR 54533), seeking public comment on permitting camera-based rear visibility systems as an alternative to inside and outside rearview mirrors.

Two individuals provided comments and noted concerns with the CV Digital Mirror System. One commenter suggested that the cameras be used in conjunction with standard rearview mirrors, rather than replacing them, due to concerns that an unsafe operating condition would exist in the event of a camera failure. Another commenter noted that neither the FMCSRs nor the CVSA out-of-service criteria address camera-based mirror systems.

FMCSA Decision

The FMCSA has evaluated the Bosch and Mekra Lang exemption application, and the comments received. For the reasons discussed below, FMCSA believes that granting the exemption to allow motor carriers to operate CMVs with the CV Digital Mirror System installed as an alternative to the two rear-vision mirrors required by the FMCSRs is likely to achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

Use of the CV Digital Mirror System provides CMV drivers with an enhanced field of view when compared to the required rear-vision mirrors because (1) it eliminates the blind spots on both sides of the vehicle created by the required rear-vision mirrors, (2) the multi-camera system expands the field of view compared to the required rear-vision mirrors by an estimated 25 percent, and (3) the system uses high definition cameras and monitors that include features such as color night vision, low light sensitivity, and light and glare reduction that together help provide drivers with improved vision in the field of view when compared to traditional rear-vision mirrors.

FMCSA notes that the CV Digital Mirror system is currently being used in a number of European countries as a legal alternative to the traditional rear-vision mirrors under the requirements of ISO (International Organization for Standardization) 16505 Rev 2019. That standard provides minimum safety, ergonomic, and performance requirements for camera monitor systems to replace mandatory inside and outside rearview mirrors for road vehicles. The ISO standard addresses camera monitor systems that will be used in road vehicles to present the required outside information of a specific field of view inside the vehicle. The CV Digital Mirror System has also been validated to meet ISO 26262–2011, *Road Vehicles—Functional Safety;* and United Nations Economic Commission

for Europe (UNECE) R46 rev 06—*Devices for Indirect Vision.*

FMCSA acknowledges the concerns of the two individual commenters regarding use of the CV Digital Mirror System. The FMCSRs impose several operational controls that will help ensure that the CV Digital Mirror System is functioning properly at all times. Section 396.7 of the FMCSRs, ''Unsafe operations forbidden,'' prohibits any vehicle from being operated in such a condition as to likely cause an accident or breakdown of the vehicle. Section 392.7(a) requires each CMV driver to satisfy himself/herself that a vehicle is in safe condition before operating the vehicle, which would include ensuring that the rear-vision mirrors are (or in this case, that the CV Digital Mirror System is) in good working order. Similarly, section 396.13(a) of the FMCSRs requires that, before driving a vehicle, a driver must be satisfied that the vehicle is in safe operating condition. If the CV Digital Mirror System (effectively functioning as the rear vision mirrors) fails during operation, the driver must complete a driver vehicle inspection report at the completion of the work day as required by section 396.11 of the FMCSRs, and the motor carrier must ensure that the defect is corrected.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning September 17, 2020 and ending September 17, 2025. During the temporary exemption period, motor carriers operating CMVs may utilize the Bosch and Mekra Lang CV Digital Mirror System installed in lieu of the two rear-vision mirrors required by section 393.80 of the FMCSRs. FMCSA emphasizes that this exemption is limited to the Bosch and Mekra Lang CV Digital Mirror System, and does not apply to any other camera-based mirror replacement system/technology. Section 396.7 of the FMCSRs, ''Unsafe operations forbidden,'' prohibits any vehicle from being operated in such a condition as to likely cause an accident or a breakdown of the vehicle. If the camera or monitor system fails during normal vehicle operation on the highway, continued operation of the vehicle shall be forbidden until (1) the CV Digital Mirror system can be repaired, or (2) conventional rear-vision mirrors that are compliant with section 393.80 are installed on the vehicle.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating CMVs utilizing the Bosch and Mekra Lang CV Digital Mirror System installed as an alternative to two rear-vision mirrors are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–20470 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Revised Notice of Intent To Prepare an Environmental Impact Statement for the Link Union Station Project, Los Angeles, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Federal Railroad Administration (FRA), on behalf of the California High-Speed Rail Authority (Authority), as the federal lead agency under National Environmental Policy Act (NEPA) Assignment is issuing this notice to advise other Federal, state, local, and tribal agencies and the public that the Authority intends to revise the scope of the analysis of the Environmental Impact Statement (EIS) for the Link Union Station Project (Link US Project) in the cities of Los Angeles and Vernon, California, compliance with relevant state and federal laws, in particular NEPA.

DATES: Written comments on the scope of the Link US Project EIS should be provided to the Authority or Metro starting on September 18, 2020, and must be received by the Authority or Metro on or before October 19, 2020, as noted below. In response to COVID–19, a virtual public scoping meeting is scheduled to occur on October 8, 2020, 6:00 p.m. to 8:00 p.m., Pacific Time. Prior to the scoping meeting date and time noted above, information regarding how to participate in the virtual meeting will be provided at the following location: *https://www.metro.net/projects/link-us/.* Additionally, further information can be obtained by calling 213–922–2524. Spanish, Chinese (Simplified), and Japanese translation will be provided. You may call 213–922–2499 at least 72 hours in advance of the meeting to request ADA accommodations or other translation services. The scoping presentation and all materials presented during the virtual scoping meeting will be made available on Metro's website referenced above.

ADDRESSES: Questions or written comments on the scope of the Link US Project EIS should be sent to Mark A. McLoughlin, Director, Environmental Services Branch, ATTN: Link US Project, California High-Speed Rail Authority, 770 L Street, Suite 620, Sacramento, CA 95814 or via email with the subject line ''Link US Project'' to *Mark.McLoughlin@hsr.ca.gov* or to Vincent Chio, Metro, Director of Program Management, Regional Rail, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza (Mail Stop 99–17–2, Los Angeles, CA 90012 or via email with the subject line ''Link US Project'' to: *linkunionstation@metro.net*). Comments may also be provided during the virtual public scoping meeting described above.

FOR FURTHER INFORMATION CONTACT: *For the Authority:* Mark A. McLoughlin, Director of Environmental Services, California High-Speed Rail Authority, (telephone: 916–403–6934; email: *mark.mcloughlin@hsr.ca.gov*). *For the FRA:* Stephanie B. Perez-Arrieta, Regional Lead, Environmental Protection Specialist, Federal Railroad Administration (telephone: 202–493–0388; email: *s.perez-arrieta@dot.gov*).

SUPPLEMENTARY INFORMATION: The Los Angeles County Metropolitan Transportation Authority (Metro) is a joint-lead agency under NEPA and the local project sponsor for the Link US

Project. Since the publication of the notice of intent (NOI), the Authority and Metro have identified the proposed off-site improvements to BNSF's Malabar Yard in the City of Vernon as a necessary component of the Link US Project. These improvements are located primarily on 46th Street and 49th Street, south of Vernon Avenue, in the northwestern portion of the City of Vernon. This Revised NOI is being issued to solicit additional public and agency input into the development of the scope of the EIS for the Link US Project with respect to the proposed off-site improvements. Public input received during outreach activities conducted by the Authority, Metro, and its representatives will be considered in the preparation of the EIS. FRA and Metro previously conducted scoping for the Link US Project joint EIS/environmental impact report (EIR) in the spring of 2016. FRA published an NOI in the **Federal Register** on May 31, 2016 (81 FR 34429). FRA and Metro held a scoping meeting on June 2, 2016, at Metro's headquarters (One Gateway Plaza, Los Angeles, California 90012) to receive agency and public input on the Link US Project. In addition to formal scoping meetings, Metro has maintained ongoing outreach to public agencies and consistently engaged the public throughout project development to provide input since spring of 2016.

At the time of project scoping, FRA and Metro intended to prepare a joint EIS/EIR pursuant to NEPA and the California Environmental Quality Act (CEQA). In 2018, Metro proceeded with the preparation of a stand-alone EIR to comply with CEQA and released a Draft EIR for public comment on January 17, 2019. Following consideration of the comments received on the Draft EIR, Metro certified a Final EIR for the Link US Project on June 27, 2019.

FRA and the State of California executed a MOU, pursuant to 23 U.S.C. 327, dated July 23, 2019 through which the State of California, acting through the California State Transportation Agency and the Authority, has assumed FRA's responsibilities under NEPA and other federal environmental laws for projects necessary for the design, construction, and operation of the California HSR System, and for other railroad projects directly connected to stations on the California HSR System, including the Link US Project. Accordingly, the Authority is the lead federal agency for complying with NEPA and other federal environmental laws for the Link US Project. Metro is the local project sponsor for the Link US project.

As described in the 2016 NOI, the Link US Project is centered at Los Angeles Union Station (LAUS). Implementation of common infrastructure designed to accommodate both regional/intercity trains and future HSR trains would result in the permanent loss of storage track capacity at the BNSF West Bank Yard, south of US–101, in the vicinity of First Street. Since FRA published the 2016 NOI, the Authority and Metro have identified off-site improvements to the BNSF Malabar Yard in the City of Vernon that are needed to restore and offset the loss of storage track capacity at the BNSF West Bank Yard. The Authority is issuing this Revised NOI to solicit additional public and agency input into the development of the scope of the Link US Project EIS with respect to the off-site improvements to the BNSF Malabar Yard proposed in the City of Vernon.

The Link US Project EIS will be used by the Authority to address the requirements of NEPA, as well as other applicable statutes, regulations, and executive orders, including (but not limited to) the Clean Air Act, Clean Water Act, Section 106 of the National Historic Preservation Act of 1966 (NHPA), Section 4(f) of the Department of Transportation Act of 1966, the Endangered Species Act, and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations).

Implementation of the Link US Project is a Federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of Section 106 of the NHPA. In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, the Authority intends to coordinate compliance with Section 106 of the NHPA with the preparation of the Link US Project EIS, beginning with the identification of consulting parties in a manner consistent with the standards set out in 36 CFR 800.8. Public comment is sought with respect to the evaluation of potential effects on historic properties.

The EIS will describe site-specific environmental effects and will identify measures to avoid, minimize, or mitigate for potential adverse environmental effects. The Authority will assess the site characteristics, size, nature, and timing of proposed site-specific improvements to determine whether the effects are potentially adverse and whether impacts can be avoided or mitigated. Information and documents regarding this environmental review process will be made available through Metro's internet site: *https://www.metro.net/projects/link-us/.*

Purpose and Need

Consistent with the 2016 NOI, the purpose of the proposed action is to increase the regional and intercity rail service capacity of LAUS and to improve schedule reliability at LAUS through the implementation of a run-through tracks configuration and elimination of the current stub-end tracks configuration while preserving current levels of freight rail operations, accommodating the planned HSR system in Southern California, increasing the passenger/pedestrian capacity and enhancing the safety of LAUS through the implementation of a new passenger concourse, meeting the multi-modal transportation demands at LAUS.

Consistent with the 2016 NOI, the need for the proposed action is generated by the forecasted increase in regional population and employment; implementation of federal, state, and regional transportation plans that provide for increased operational frequency for regional and intercity trains and introduction of the planned HSR system in Southern California. Localized operational, safety, and accessibility upgrades in and around LAUS will be required to meet existing demand and future growth.

Alternatives

As described in the 2016 NOI, the Link US Project EIS will include an evaluation of one or more Build Alternatives (Proposed Action), as well as a No Action Alternative.

No Action Alternative

The No Action Alternative is defined to serve as the baseline for assessment of the proposed action. The No Action Alternative represents the region's transportation system (highway, air, and conventional rail) as it currently exists, and as it would exist after completion of programs or projects currently planned for funding and implementation by 2040.

Proposed Action (Link US Project Build Alternatives)

The Proposed Action consists of two build alternatives that address proposed infrastructure in the vicinity of LAUS, in conjunction with off-site improvements into the BNSF Malabar Yard in the City of Vernon. The build alternatives would result in enhanced operational capacity from control point (CP) Chavez in the north (near North Main Street) to CP Olympic in the south (near the Interstate 10/State Route 60/

U.S.–101 interchange), which serve as the northern and southern project termini. Major components of the build alternatives are described below.

- Throat and Elevated Rail Yard—The build alternatives would include subgrade, signal, and structural improvements in the throat segment to increase the elevation of the tracks leading to the rail yard in the concourse segment at LAUS. The throat would be reconstructed with up to seven lead tracks north of LAUS. The build alternatives would also include new passenger platforms with canopies above the elevated rail yard.
- Passenger Concourse—The build alternatives would include: (1) An expanded passageway; or (2) an at-grade passenger concourse. The expanded passageway or at-grade passenger concourse would be constructed below the elevated rail yard.
- Run-Through Tracks—The build alternatives would include up to 10 new run-through tracks (including the possibility of a loop track) south of LAUS to facilitate connections for regional/intercity rail trains and future HSR trains to the main line tracks on the west bank of the Los Angeles River.
- BNSF Malabar Yard Off-Site Improvements—The build alternatives also require off-site improvements to BNSF's Malabar Yard in the City of Vernon, California, primarily on 46th Street and 49th Street. The off-site improvements are proposed to restore and offset the permanent loss of storage track capacity at the BNSF West Bank Yard.

The proposed action would also require modifications to US–101 and local streets (including potential street closures and geometric modifications); railroad signal, positive train control, and communications-related improvements; modifications to the Gold Line light rail platform and tracks; modifications to the main line tracks on the west bank of the Los Angeles River; modifications to Keller Yard and the Amtrak lead track; permanent removal of storage tracks and partial relocation of the BNSF West Bank Yard; new access roadways to the railroad right-of-way; additional right-of-way; new utilities; utility relocations, replacements, and abandonments; and new drainage facilities/water quality improvements.

Probable Effects

The EIS will include an evaluation of all environmental, social, and economic impacts of the construction and operation of the proposed action in detail. Impact areas to be addressed in the EIS include: Transportation; air quality and greenhouse gases; noise and vibration; public utilities and energy; biological and wetland resources; floodplains, hydrology and water quality; geology, soils, seismicity; hazardous waste and materials; safety and security; socioeconomics and communities; land use and planning; visual quality and aesthetics; historic, cultural and paleontological resources; regional growth; and environmental justice. Measures to avoid, minimize, and mitigate adverse effects will be identified and evaluated.

Scoping and Comments

FRA and Metro have previously carried out scoping for the Link US Project EIS. Since publication of the 2016 NOI, the Authority and Metro have identified the BNSF Malabar Yard off-site improvements as a necessary component of the Link US Project. FRA, on behalf of the Authority, is issuing this Revised NOI to solicit additional public and agency input into the development of the scope of the EIS for the Link US Project with respect to the BNSF Malabar Yard off-site improvements and to advise the public that outreach activities conducted by the Authority and Metro and its representatives will be considered in the preparation of the EIS. Comments and suggestions on the additional project elements described in this Revised NOI are invited from all interested agencies, Native American Tribes, and the public to ensure the full range of issues related to the proposed action and all reasonable build alternatives are addressed and all significant issues are identified. In particular, the Authority and Metro are interested in determining whether there are areas of environmental concern where there might be a potential for adverse effects.

In response to this Revised NOI, public agencies with jurisdiction are requested to advise the Authority and Metro of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed action. Public agencies are requested to advise the Authority and Metro if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the EIS. To date, Caltrans, District 7 has expressed its intention to participate as a cooperating agency in the preparation of the EIS. The virtual public scoping meeting has been scheduled as an important component of the scoping process for the Federal environmental review. The virtual public scoping meeting described above in this Revised NOI will also be advertised locally and included in additional public notification.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being or have been carried out by the State of California pursuant to 23 U.S.C. 327 and a Memorandum of Understanding (MOU) dated July 23, 2019, and executed by the FRA and the State of California.

Issued in Washington, DC.

Jamie P. Rennert,

Director, Office of Infrastructure Investment.

[FR Doc. 2020–20520 Filed 9–16–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5330

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Return of Excise Taxes Related to Employee Benefit Plans.

DATES: Written comments should be received on or before November 16, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Taxes Related to Employee Benefit Plans.

OMB Number: 1545–0575.

Form Number: 5330.

Abstract: Internal Revenue Code sections 4971, 4972, 4973(a)(3), 4975,

4976, 4977, 4978, 4978A, 4978B, 4979, 4979A and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 8,403.

Estimated Time per Respondent: 64.28 hours.

Estimated Total Annual Burden Hours: 540,145.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 10, 2020.

Martha R. Brinson

Tax Analyst.

[FR Doc. 2020–20410 Filed 9–16–20; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Library of Congress

Copyright Office

37 CFR Part 210

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment; Interim Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2020–5]

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The U.S. Copyright Office is issuing an interim rule regarding information to be provided by digital music providers pursuant to the new compulsory blanket license to make and deliver digital phonorecords of musical works established by title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. The law establishes a new blanket license, to be administered by a mechanical licensing collective, and to become available on the January 1, 2021 license availability date. Having solicited multiple rounds of public comments through a notification of inquiry and notice of proposed rulemaking, the Office is adopting interim regulations concerning notices of license, data collection and delivery efforts, and reports of usage and payment by digital music providers. The Office is also adopting interim regulations concerning notices of nonblanket activity and reports of usage by significant nonblanket licensees and data collection efforts by musical work copyright owners.

DATES: Effective October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov,* or Terry Hart, Assistant General Counsel, by email at *tehart@copyright.gov*. Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It does so by switching from a song-by-song licensing system to a blanket licensing regime that will become available on January 1, 2021 (the ''license availability date''), and be administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office. Digital music providers (''DMPs'') will be able to obtain the new compulsory blanket license to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license), subject to compliance with various requirements, including reporting obligations.[2] DMPs may also continue to engage in those activities solely through voluntary, or direct, licensing with copyright owners, in which case the DMP may be considered a significant nonblanket licensee (''SNBL'') under the statute, subject to separate reporting obligations.

In September 2019, the Office issued a notification of inquiry (''NOI'') that describes in detail the legislative background and regulatory scope of the present rulemaking proceeding.[3] As detailed in the NOI, the statute specifically directs the Copyright Office to adopt a number of regulations to govern the new blanket licensing regime and vests the Office with broad general authority to adopt such regulations as may be necessary or appropriate to effectuate the new blanket licensing structure. After thoroughly considering the public comments received in response, the Office issued a series of notices addressing various subjects presented in the NOI. In April 2020, the Office issued a notice of proposed rulemaking (''NPRM'') specifically addressing notices of license, notices of nonblanket activity, data collection and delivery efforts, and reports of usage and payment, and is now promulgating an interim rule based upon that NPRM.[4]

The Office received comments from a number of stakeholders in response to the NPRM, largely expressing support for the overall proposed rule. The MLC ''appreciates the significant time, effort and thoughtfulness that the Office expended to craft these substantial rules'' and ''agrees with the bulk of the language in the Proposed Regulations as appropriate and well-crafted to implement the MMA.''[5] The DLC ''commends the Office for its thoughtful, careful, and thorough consideration of many highly complex issues that are posed by this rulemaking,'' and states that ''the Proposed Rule largely succeeds in fusing the MMA's statutory design with what is reasonable and practical from an industry perspective.''[6] Others expressed similar sentiments. For example, Music Reports ''acknowledges the massive effort that the Office has undertaken in constructing these extensive proposed rules, and enthusiastically endorses the overall framework and degree of balance achieved throughout''[7] and the National Music Publishers' Association (''NMPA'') ''lauds the Copyright Office for its thorough and educated work.''[8] Commenters also acknowledged the inclusiveness and fairness the Office showed to all parties' concerns in the proposed rule. For example, the Recording Academy states that ''[t]he NPRM strikes an appropriate balance to a number of complex and technical questions, and throughout the rulemaking process the Office was inclusive of stakeholders' comments, input, and ideas''[9] and Future of Music Coalition (''FMC'') noted ''the Office's ongoing efforts to implement the Music Modernization Act in ways that accord with legislative intent, that demonstrate ongoing concern for fairness to all parties, that increase transparency, and that harmonize the public interest with the interests of creators, including songwriters and composers.''[10]

That said, the public comments also revealed a number of discrete issues for the Copyright Office to consider and

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[3] 84 FR 49966 (Sept. 24, 2019).

[4] 85 FR 22518 (Apr. 22, 2020). All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/*. Specifically, comments received in response to the NOI are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001* and comments received in response to the NPRM are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=ASC&sb=title&po=0&dct=PS&D=COLC-2020-0005*. Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html*. References to these comments are by party name (abbreviated where appropriate), followed by ''Initial NOI Comment,'' ''Reply NOI Comment,'' ''NPRM Comment,'' ''Letter,'' or ''*Ex Parte* Letter,'' as appropriate.

[5] MLC NPRM Comment at 2.

[6] DLC NPRM Comment at 1.

[7] Music Reports NPRM Comment at 2.

[8] NMPA NPRM Comment at 1.

[9] Recording Academy NPRM Comment at 1.

[10] FMC NPRM Comment at 1.

address in promulgating this rule. The MMA significantly altered the complex music licensing landscape after careful congressional deliberation following extensive input from, and negotiations between, a variety of stakeholders.[11] The Office has endeavored to build upon that foundation and adopt a reasonable regulatory framework for the MLC, DMPs, copyright owners and songwriters, and other interested parties to operationalize the various duties and entitlements set out by statute.[12] The subjects of this rule have made it necessary to adopt regulations that navigate convoluted nuances of the music data supply chain and differing expectations of the MLC, DMPs, and other stakeholders, while remaining cognizant of the potential effect upon varied business practices across the digital music marketplace.[13] As noted in the NPRM, while the Office's task was aided by receipt of numerous helpful and substantive comments representing interests from across the music ecosystem, the comments also uncovered divergent assumptions and expectations as to the shouldering and execution of relevant duties assigned by the MMA.

Although the Office has encouraged continued dialogue to expeditiously resolve or refine these areas of stakeholder disagreement—in particular, to facilitate cooperation between the MLC and DLC on business-specific questions [14]—areas of consensus have remained sparse.[15] While the Copyright Office appreciates that the relevant stakeholders remain in active discussions on operational matters, the administrative record reflects spots of significant stakeholder disagreement despite the broad general support for the overall framework of the proposed rule. The Office facilitated the rulemaking process by, among other things, convening *ex parte* meetings with groups of stakeholders to discuss aspects of the proposed rule and granting requests for additional time to submit comments.[16] At times, the Office found it necessary to address a lack of agreement or a dearth of sufficiently detailed information through additional requests for information and/or convening joint *ex parte* meetings to confirm issues of nuance, which complicated the pace of this rulemaking, but was helpful to gather useful information for the Office to consider in promulgating the regulations. The Office thanks the commenters for their thoughtful perspectives and would welcome continued dialogue across industry stakeholders and with the Office in the months before the license availability date.

In recognition of the significant legal changes brought by the MMA, and challenges both in setting up a fully functional MLC and for DMPs to adjust their internal practices, the NPRM invited comments on whether it would be beneficial to adopt the rule on an interim basis.[17] The majority of commenters weighing in on this issue support an interim rule.[18] The MLC, for example, says ''[t]here are many moving pieces and tight statutory deadlines, and permitting further adjustment to these Proposed Regulations after the interested parties have lived with and been operating under them for a reasonable period of time is a practical and flexible approach'' and ''may be particularly useful with respect to the Proposed Regulations concerning the substantive information DMPs are to provide in their Usage Reports.'' [19] The DLC sounded caution, stating that ''it is critical that [DMPs], [SNBLs], and other participants have clarity and certainty about the regulatory regime as they begin to build systems to accommodate that regime.'' [20]

After careful consideration of these comments, the Office has decided to adopt this rule on an interim basis for those reasons expressed in the NPRM and identified by commenters in support of the proposal. In doing so, the Office emphasizes that adoption of this rule on an interim basis is not an open-ended invitation to revisit settled provisions or rehash arguments, but rather is intended to maintain flexibility to make necessary modifications in response to new evidence, unforeseen

[11] *See, e.g., Music Policy Issues: A Perspective from Those Who Make It: Hearing on H.R. 4706, H.R. 3301, H.R. 831 and H.R. 1836 Before H. Comm. On the Judiciary,* 115th Cong. 4 (2018) (statement of Rep. Nadler) (''This emerging consensus gives us hope that this committee can start to move beyond the review stage toward legislative action.''); 164 Cong. Rec. H3522, 3537 (daily ed. Apr. 25, 2018) (statement of Rep. Collins) (''[This bill] comes to the floor with an industry that many times couldn't even decide that they wanted to talk to each other about things in their industry, but who came together with overwhelming support and said this is where we need to be.''); 164 Cong. Rec. S501, 502 (daily ed. Jan. 24, 2018) (statement of Sen. Hatch) (''I don't think I have ever seen a music bill that has had such broad support across the industry. All sides have a stake in this, and they have come together in support of a commonsense, consensus bill that addresses challenges throughout the music industry.''); 164 Cong. Rec. H3522, 3536 (daily ed. Apr. 25, 2018) (statement of Rep. Goodlatte) (''I tasked the industry to come together with a unified reform bill and, to their credit, they delivered, albeit with an occasional bump along the way.''). *See also* U.S. Copyright Office, Copyright and the Music Marketplace at Preface (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (noting ''the problems in the music marketplace need to be evaluated as a whole, rather than as isolated or individual concerns of particular stakeholders'').

[12] *See Alliance of Artists & Recording Cos.* v. *DENSO Int'l Am., Inc.,* 947 F.3d 849, 863 (D.C. Cir. 2020) (''[T]he best evidence of a law's purpose is the statutory text, and most certainly when that text is the result of carefully negotiated compromise among the stakeholders who will be directly affected by the legislation.'') (internal quotation marks, brackets, and citations omitted); *see also* 17 U.S.C. 115(d)(12)(A) (''The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection.'').

[13] *See, e.g., Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)); *see also* Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 12 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'') (acknowledging that ''it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations''); H.R. Rep. No. 115–651, at 14 (2018); S. Rep. No. 115–339, at 15 (2018); 17 U.S.C. 115(d)(12)(A).

[14] *See* 85 FR at 22519, 22523; *see also* 84 FR at 32296; 84 FR at 49968.

[15] For example, the MLC and DLC did not collaborate before submitting initial comments in response to the notification of inquiry. MLC Initial NOI Comment at 1 n.2 (''While the MLC and the [DLC] have not collaborated on the submission of initial comments in this proceeding, collaboration has been discussed and is anticipated in connection with reply comments, with the intent to provide supplemental information in reply comments as to any areas of common agreement.''); DLC Initial NOI Comment at 2 n.3 (same). After extending the deadline for reply comments at the MLC's and DLC's shared request, no compromise resulted. MLC Reply NOI Comment at 1 n.2 (''Following the filing of the initial comments, the DLC and the MLC have engaged in a concerted effort to reach compromise on regulatory language. While the complexity of the issues has made it difficult to reach compromise, the DLC and the MLC plan to continue discussions and will revert back to the Office with any areas of compromise.''); DLC Reply NOI Comment at 1 n.3 (same). *See also* DLC Letter July 8, 2020 at 2 (''DLC reached out to the MLC to schedule an OAC meeting before submitting this letter, as the Office had requested. That meeting has not yet been scheduled.''); MLC Letter July 8, 2020 (no mention of meeting or Office's request).

[16] *See, e.g.,* U.S. Copyright Office Letter June 8, 2020; U.S. Copyright Office Letter June 10, 2020; U.S. Copyright Office Letter June 30, 2020; 84 FR 65739 (Nov. 29, 2019).

[17] 85 FR at 22519.

[18] *See, e.g.,* The Alliance for Recorded Music (''ARM'') NPRM Comment at 11; MLC NPRM Comment at 45; Music Reports NPRM Comment at 2–3 (''[I]t would be beneficial for the Office to adopt the proposed rule on an interim basis due to the intricacies of the subject matter and the further issues likely to arise during the MLC's first full year of operation following the blanket license availability date.''); Peermusic NPRM Comment at 2 (''[T]his is an excellent suggestion.''); FMC NPRM Comment at 1–2 (calling the proposal a ''reasonable idea,'' but saying, ''[w]hat we don't want to do is have an interim rule that sets out ambitious goals and standard-setting best practices and then a final rule that rolls back some of that ambition'').

[19] MLC NPRM Comment at 45.

[20] DLC NPRM Comment at 1.

issues, or where something is otherwise not functioning as intended. Moreover, if any significant changes prove necessary, the Office intends, as the DLC requests, to provide adequate and appropriate transition periods.[21] During the proceeding, the DLC has advocated for collaboration through the MLC's operations advisory committee to address various issues and ''evaluate potential areas for improvement once all parties have had more experience with the new blanket license system.'' [22] The Office supports collaboration between the MLC and DLC, and believes that adopting the rule on an interim basis will help facilitate any necessary rule changes identified through such cooperation. Going forward, the Office particularly invites the operations advisory committee, or the MLC and DLC collectively, to inform the Office on any aspects of the interim rule where there is consensus that a modification is needed.

Having now reviewed and considered all relevant comments received in response to the NOI and NPRM, including through a number of *ex parte* communications as detailed under the Office's procedures, the Office has weighed all appropriate legal, business, and practical implications and equities that have been raised, and pursuant to its authority under 17 U.S.C. 115 and 702 is adopting interim regulations with respect to notices of license, notices of nonblanket activity, data collection and delivery efforts, and reports of usage and payment under the MMA. The Office has adopted regulations that it believes best reflect the statutory language and its animating goals in light of the record before it.[23] Indeed, the Office has ''use[d] its best judgment in determining the appropriate steps.'' [24]

II. Interim Rule

Based on the public comments received in response to the NPRM, the Office finds it reasonable to adopt the majority of the proposed rule as interim regulations. As noted above, commenters generally strongly supported the overall rule as well as particular provisions. Where parties have objected to certain aspects of the proposed rule, the Office has considered those comments and resolved these issues as discussed below. If not otherwise discussed, the Office has concluded that the relevant proposed provision should be adopted for the reasons stated in the NPRM.

The resulting interim rule is intended to represent a balanced approach that, on the one hand, ensures the MLC will receive the information it needs to successfully fulfill its statutory duties, while mindfully accounting for the operational and engineering challenges being imposed on DMPs to provide this information. In some instances, the interim rule expands DMP reporting obligations, such as in connection with unaltered metadata and by eliminating a ''practicability'' exception—both areas of the proposed rule over which the MLC expressed significant concern. But the interim rule also acknowledges competing concerns raised by the DLC and creates transition periods for DMPs to update their systems. In other instances, the interim rule expands or preserves DMP reporting flexibility, though similarly taking into account the MLC's concerns. For example, in connection with monthly royalty payments, the interim rule retains the proposed rule's generally open approach to permitting DMPs to reasonably use estimates as royalty accounting inputs, but to address the MLC's comments, it requires DMPs to provide additional information about the estimates they may use. The interim rule also benefits from input received from a multitude of other interested parties. For example, the interim rule significantly revises the proposed approach to certain information relating to statutory termination rights in light of comments from groups representing songwriter interests, and in response to sound recording copyright owners, limits MLC access to certain data held by DMPs flagged as being particularly business-sensitive.

A. Notices of License and Nonblanket Activity

Commenters agreed with the general framework of the NPRM regarding the notice of license (''NOL'') and notice of nonblanket activity (''NNBA'') requirements, with a number of minor adjustments proposed, as discussed below.[25]

1. Notices of License

Name and contact information and submission criteria. The NPRM generally adopted the requirements for name and contact information and submission criteria suggested by the MLC, DLC, and other commenters in response to the NOI. The proposed language regarding the requirements for providing a description of the DMP and its covered activities were unopposed by the MLC, while the DLC recommended two adjustments. First, the DLC requested that the Office remove ''noninteractive streams'' from the list of DPD configurations required to be identified in the notice of license.[26] The DLC explained, ''industry practice and customs for decades have acknowledged that noninteractive streaming does not require a mechanical license, and this rulemaking should not include any language that could call that industry practice into question.'' [27] It added that it ''is unaware of any noninteractive streaming service that obtains mechanical licenses.'' [28] The Office declines to adopt this suggestion. As the Office has explained in rulemakings predating the MMA, while it may be uncommon for a noninteractive stream to result in a DPD, there is nothing in the statutory language that categorically prevents it.[29] Section 115 provides only that a specific *type* of noninteractive stream is not a DPD, namely: ''[a] digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.'' [30] The MMA did not alter the statutory definition of a DPD with respect to noninteractive streams, and the existence of any industry customs or norms to the contrary (or lack of a current rate) do not override the plain language of the statute. Accordingly, the Office has retained the proposed language in the interim rule.

The Office also declines to adopt the DLC's suggestion to remove

[21] *See id.*

[22] DLC *Ex Parte* Letter July 24, 2020 at 2; *see also* DLC *Ex Parte* Letter June 23, 2020 at 5–6; DLC Letter July 8, 2020 at 2; DLC *Ex Parte* Letter June 26, 2020 at 2; DLC Letter July 13, 2020 at 6.

[23] *See* H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12 (''The Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.''); *see also* 17 U.S.C. 115(d)(12)(A); 84 FR at 49967–68.

[24] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12; *see* 17 U.S.C. 115(d)(12)(A); *Brand X,* 545 U.S. at 980 (citing *Chevron,* 467 U.S. 837).

[25] *See, e.g.,* Songwriters of North America (''SONA'') & Music Artists Coalition (''MAC'') NPRM Comment at 4 (supporting the proposed information DMPs must provide in notices of license, including with respect to voluntary licenses); ARM NPRM Comment at 3 (supporting requirement that MLC ''maintain a current, free, and publicly accessible and searchable online list of all blanket licenses including information about whether a notice of license was rejected and why and whether a blanket license has been terminated and why'').

[26] DLC NPRM Comment at 3.

[27] *Id.*

[28] *Id.*

[29] 74 FR 4537, 4541 (Jan. 26, 2009); 73 FR 66173, 66180–81 (Nov. 7, 2008).

[30] 17 U.S.C. 115(e)(10).

''Discounted, but not free-to-the-user'' from the list of service types the DMP offers,[31] but it has amended the language of that provision in response to the DLC's comments. The Office agrees with the MLC that it is likely important to the MLC and copyright owners to know when services are offered at discounted rates, and so those should be identified in NOLs.[32] At the same time, the Office accepts the DLC's point that a discounted service is not actually a separate service *type* but rather ''a particular pricing level *for* a service type.'' [33] The Office has clarified the language of that provision.

Finally, the Office declines to adopt the Future of Music Coalition's (''FMC'') suggestion to require that the description of the DMP's service type be tied to the specific categories of activities or offerings adopted by the Copyright Royalty Judges.[34] While the Office supports FMC's stated aims of increasing trust and transparency, as noted in the NPRM, ''such details may go beyond the more general notice function the Office understands NOLs to serve'' and will be reported to the MLC in reports of usage [35] (and, as addressed in a separate rulemaking, to copyright owners in royalty statements).[36]

Voluntary license numerical identifier. Music Reports proposed requiring DMPs to include a unique, persistent identifier in NOLs for each voluntary license described therein, saying it would promote efficiency and ''provide a strong foundation for other administrative functions.'' [37] Music Reports proposed that the MLC should, in turn, include the same numerical identifiers in response files sent to DMPs, and that the DMPs should include them in reports of usage.[38] In response, the MLC stated that while it ''intends to include in response files a persistent and unique (to that DMP) identifier for voluntary licenses,'' and ''DMPs would provide those identifiers when they provide (or update) their voluntary license repertoires,'' it did ''not believe that DMPs need to be required to include these identifiers in their monthly usage reporting,'' since that would essentially require DMPs to duplicate the matching work that the MLC is charged with administering.[39] The Office adopts Music Reports' proposal except as to the requirement for DMPs to report a numerical identifier in reports of usage for the reasons identified by the MLC.

Voluntary license descriptions. The NPRM required DMPs to provide a description of any applicable voluntary license or individual download license that it is operating under (or expects to be operating under) concurrently with the blanket license to aid the MLC [40] in fulfilling its obligations to ''confirm uses of musical works subject to voluntary licenses and individual download licenses, and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license.'' [41] The MLC and DLC each commented on the timing aspects of this proposal. With respect to voluntary licenses taking effect before March 31, 2021, the MLC requested that DMPs who wish to have these licenses carved out of their blanket license royalty processing be required to provide this information at least 90 days prior to the first reporting of usage under such voluntary licenses, to allow the MLC sufficient time to process early 2021 usage and avoid a ''processing logjam.'' [42] The DLC concurred generally that the MLC will face significant burdens around the license availability date, but suggested that the proposed language requiring the submission of updated information about voluntary licenses ''at least 30 calendar days before delivering a report of usage covering a period where such license is in effect'' could ''cause confusion.'' [43] The DLC contended that ''[i]t is common for voluntary licenses to cover past period terms,'' meaning that even when a DMP delivers information about such licenses promptly after execution of such deals, the description would not be considered timely under the language of the rule if the period the license covers began more than 30 days prior to execution.[44] In response, the MLC said while it ''does not oppose clarifying that notice of a retroactive license is not a violation,'' ''the regulation should be clear that the MLC cannot be required to process voluntary licenses that have not been submitted sufficiently in advance of usage reporting, and also that the voluntary license should be reported promptly, to minimize adjustments that copyright owners would have to address.'' [45]

The Office is adjusting the interim rule to address these concerns, and has adopted deadline language similar to what the MLC has proposed.[46] At the same time, the Office also credits the DLC's suggestion that the rule expressly account for retroactive licenses, to avoid a situation where descriptions of such licenses would potentially inevitably be untimely submitted. The interim rule has been amended to take these considerations into account with respect to submissions of descriptions of voluntary licenses prior to the first usage reporting date following the license availability date as well as subsequent amendments. It also excuses the MLC from undertaking any related obligations for descriptions submitted either less than 90 calendar days prior to the delivery of a report of usage prior to March 31, 2021, or less than 30 calendar days prior to the delivery of a report of usage after that date. The Office notes that the timing requirement for DMPs to deliver updated information regarding voluntary licenses is already subject to the qualification that it be to the extent commercially reasonable. It would not be commercially reasonable to expect the impossible (*i.e.,* delivery of a retroactive license prior to it going into effect).

In connection with the description of a voluntary license, Music Reports proposed amending the proposed requirement to identify the musical work copyright owner to instead alternatively permit identification of a licensor or administrator.[47] Although Music Reports persuasively outlined the practical realities underlying this request,[48] the Office believes the NPRM best reflects the statutory language requiring DMPs to ''identify and provide contact information for all *musical work copyright owners* for works embodied in sound recordings as to which a voluntary license, rather than the

[31] DLC NPRM Comment at 3.

[32] *See* MLC Initial NOI Comment at 5.

[33] DLC NPRM Comment at 3.

[34] FMC NPRM Comment at 2.

[35] 85 FR at 22520.

[36] *See* U.S. Copyright Office, Interim Rule, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[37] Music Reports NPRM Comment at 4.

[38] *Id.* at 5–6.

[39] MLC *Ex Parte* Letter Aug. 16, 2020 at 5.

[40] 85 FR at 22520.

[41] 17 U.S.C. 115(d)(3)(G)(i)(I)(bb).

[42] MLC NPRM Comment at 6.

[43] DLC NPRM Comment at 1, 4.

[44] *Id.* at 4.

[45] MLC *Ex Parte* Letter Aug. 16, 2020 at 4.

[46] As discussed below, the DLC separately proposes that DMPs be permitted to submit NOLs at least 30 days prior to the license availability date, which supports the reasonableness of the MLC's proposed timeline for voluntary license submissions (which works out to being 45 days before the license availability date for a voluntary license subject to the January 2021 reporting period for a DMP intending to receive an invoice from the MLC prior to delivering its royalty payment). *See* DLC NPRM Comment at 1–2.

[47] Music Reports NPRM Comment at 6.

[48] *Id.* (''DMPs notoriously do not have a clear view of all the distinct copyright owners that may be administered from time to time by the publishing administrators with whom they have licenses, much less the contact information for such copyright owners.'').

blanket license, is in effect with respect to the uses being reported.'' [49] In addition, while Music Reports suggests that this amendment would provide clarity to DMPs,[50] the DLC did not itself call for such an amendment or object to the provision as it appeared in the NPRM. The interim rule retains the requirement to identify the musical work copyright owner, but allows contact information for a relevant administrator or other licensor to be listed instead of contact information for the copyright owner.

Harmless errors. The DLC suggested that the harmless error rule proposed in the NPRM—which provides that ''[e]rrors in the submission or content of a notice of license that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective to reject a notice or terminate a blanket license'' [51]—should be extended to apply to ''failures in the timeliness in amendments.'' [52] The Office has amended the interim rule to include good faith failures in the timeliness in amendments within the scope of the harmless error rule.

Transition to blanket license. The NPRM proposed that DMPs should submit notices of license to the MLC within 45 days after the license availability date where such DMPs automatically transition to operating under the blanket license pursuant to 17 U.S.C. 115(d)(9)(A). The DLC suggested the rule should allow DMPs to submit notices earlier—at least 30 days prior to the license availability date—and to provide that the blanket license would become effective as of the license availability date for such notices.[53] The MLC has represented that it intends to begin accepting NOLs even sooner—''as soon as these regulations have been promulgated and the MLC is able to complete its online NOL form and make it available.'' [54] The Office agrees that this is reasonable and has amended the language of the rule to require the MLC to begin accepting such notices no less than 30 days prior to the license availability date.

The DLC separately requested that the rule clarify, for notices of licenses submitted during this period of transition to the blanket license, that ''the rejection of such a notice of license based on any challenge the MLC may make to the adequacy of the notice will not immediately terminate the blanket license during the notice and cure period or any follow-on litigation challenging the MLC's final decision to reject the notice of license, provided the blanket licensee meets the blanket license's other required terms.'' [55] The Office has considered this comment and made an adjustment to this aspect of the interim rule. The NPRM articulated the Office's view that the statutory provisions regarding notices of license and the transition to the blanket license must be read together, such that DMPs transitioning to the blanket license must still submit notices of license to the MLC. But because the statute provides that the blanket license ''shall, without any interruption in license authority enjoyed by such [DMP], be automatically substituted for and supersede any existing compulsory license,'' the Office agrees with the DLC that clarification may be helpful.[56] In general, because a compliant notice of license is a condition to ''obtain'' a blanket license, a notice of license in the first instance that has been finally rejected (*i.e.,* where the alleged deficiency is not cured within the relative period and/or the rejection overruled by an appropriate district court) by the MLC would seem to never take effect.[57] In the case of a defective notice of license submitted in connection with a DMP's transition from existing compulsory license(s) to the blanket license, however, because the blanket license is ''automatically substituted,'' a finally rejected notice of license may be more akin to a default, which would begin after the resolution of the notice and cure period or any follow-on litigation challenging the MLC's final decision to reject the notice of license, provided the blanket licensee meets the blanket license's other required terms.

2. Notices of Nonblanket Activity

The proposed regulations for notices of nonblanket activity (''NNBAs'') from SNBLs generally mirror the requirements for NOLs, with conforming adjustments reflecting appropriate distinctions between the two types of notices. The DLC submitted comments regarding the description of the DMP and its covered activities and the harmless error rule that mirror its suggestions for these two issues for NOLs. For the same reasons discussed above, the Office incorporates the DLC's proposed changes into the interim rule.

B. Data Collection and Delivery Efforts

While the MLC is ultimately tasked with matching musical works to sound recordings embodying those works and identifying and locating the copyright owners of those works (and shares thereof), DMPs and musical work copyright owners also have certain obligations under the MMA to engage in data collection efforts. The Office proposed regulations related to the obligations of both sets of parties, discussed in turn below.

1. Efforts by Digital Music Providers

The MMA requires DMPs to ''engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings'' certain data about sound recordings and musical works.[58] A DMP that fails to fulfill this obligation may be in default of the blanket license if, after being served written notice by the MLC, it refuses to cure its noncompliance within 60 days.[59] The NPRM proposed a minimum set of acts that would be a part of good-faith, commercially reasonable efforts under the MMA. These acts would have included requesting in writing ''from sound recording copyright owners and other licensors of sound recordings'' specific information about the sound recordings and underlying musical works that it had not previously obtained on an ongoing basis, at least once per quarter.[60] For information that a DMP has already obtained, the rule proposed an ongoing and continuous obligation to request any updates from owners or licensors.[61] Alternatively, the proposed rule permitted DMPs to satisfy their obligations to obtain the desired information from sound recording copyright owners and other licensors by arranging for the MLC to receive this information from an authoritative source of such information, such as SoundExchange, unless the DMP has actual knowledge that the source lacks such information for the relevant

[49] 17 U.S.C. 115(d)(4)(A)(ii)(II) (emphasis added).

[50] Music Reports NPRM Comment at 6.

[51] 85 FR at 22538 (proposed § 210.24(e)). The harmless error provision further requires that it ''shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.''

[52] DLC NPRM Comment at 2.

[53] *Id.* at 1–2. The DLC made this suggestion ''[i]n order to lay the groundwork for an orderly processing of the notices (and avoid overwhelming the MLC with the simultaneous submission of notices from every licensee on the license availability date).'' *Id.* at 1.

[54] MLC *Ex Parte* Letter Aug. 16, 2020 at 5.

[55] DLC NPRM Comment at 2.

[56] 17 U.S.C. 115(d)(9)(A).

[57] *See id.* at 115(d)(2)(A) (detailing procedure for obtaining blanket license, including specifying requirements for rejection of license and the operation of a related notice and cure period).

[58] *Id.* at 115(d)(4)(B).

[59] *Id.* at 115(d)(4)(E)(i)(V).

[60] 85 FR at 22524. The information required to be collected by the NPRM mirrored the information enumerated in 17 U.S.C. 115(d)(4)(B).

[61] *Id.* at 22524, 22540.

work.[62] The NPRM noted the relationship between data collection efforts by DMPs and reports of usage. Because of this, some issues raised during this proceeding are relevant to both provisions. One such issue is the reporting by DMPs of sound recording metadata that has been altered by DMPs for normalization and display purposes. This issue is discussed below in the section on reports of usage.

In addition to comments from parties on various aspects of this issue, the MLC and DLC both proposed regulatory text.[63] Several commenters expressed their support for the general approach taken by the NPRM. They include representatives of the sound recording copyright owner community, who disagreed with calls for more robust obligations. ARM agreed specifically with the NPRM's approach of not imposing a requirement for DMPs to contractually require sound recording copyright owners to provide DMPs with the information required by regulations, opining that such a requirement ''run[s] counter to the statute.'' [64] The Recording Academy also supported the approach outlined in the NPRM, calling it a ''balanced process.'' [65]

Others advanced alternative proposals to the obligations provided in the NPRM. The MLC urged stronger obligations on the part of DMPs to obtain sound recording information, saying the NPRM ''read[s] the requirement to make such efforts out of the statute, substituting a plain request for information, with no true affirmative steps to achieve the MMA's required efforts to 'obtain' the data.'' [66] The MLC proposed revisions to the regulatory language in accordance with its position; these included ''[s]pecificity in correspondence,'' ''[t]argeted follow-up,'' ''[r]eporting on efforts,'' ''[r]eporting on failures,'' ''[c]ertification of compliance,'' and ''[e]nforcement.'' [67] It also called for a most-favored-nation-type provision that would require that ''a DMP shall undertake no lesser efforts to obtain the [applicable] metadata . . . than it has undertaken to obtain any other sound recording or musical work information from such sound recording copyright owners or licensors,'' arguing that ''[r]egardless of the differences among DMPs, every DMP can undertake the same level of efforts [for the statutory data collection requirement] that it has undertaken to obtain other metadata from the same licensors where it desired such data for its own business purposes.'' [68] The music publishing community generally echoed the position of the MLC on this issue and called for greater obligations on DMPs to provide sound recording and musical work information to the MLC.[69]

The DLC agreed with the general approach of the NPRM but offered some amendments. Several concerned the collection and reporting of unaltered sound recording or musical work data and are addressed below in the section on reports of usage. The DLC asked the Office to clarify that ''a digital music provider can satisfy the 'good-faith, commercially reasonable efforts' standard by relying on'' a data feed of metadata that it receives from a record label or distributor, ''and is not obligated to manually incorporate additional data that it may happen to receive through other means, such as through emails,'' since doing so would be ''inefficient and time-consuming.'' [70]

While, as noted, ARM was supportive of the NPRM's rejection of any obligations for DMPs to contractually require information from sound recording copyright owners, it ''strongly oppose[d]'' the requirement for DMPs to request metadata from sound recording copyright owners on a quarterly basis.[71] It noted that the major record labels already provide regular metadata feeds to DMPs, which ''include weekly delivery of the sound recording metadata that accompanies that week's new releases *and* real-time updates and corrections to previously provided sound recording metadata.'' [72] ARM argued, ''[g]iven the comprehensiveness, frequency and immediacy of the record companies' metadata updates, the proposal to have DMPs request quarterly and other ad hoc updates from sound recording copyright owners is nothing more than makework.'' [73]

Good-faith efforts.

The Office has adjusted the interim rule based on public feedback. First, no commenter supported the Office's proposal regarding quarterly written requests for sound recording and musical work information. The rule adopts a more flexible requirement that such efforts be taken ''periodically,'' rather than specifying the period. Adopting some of the MLC's proposals, the interim rule requires such efforts to be ''specific and targeted'' toward obtaining any missing information. DMPs are also required to solicit updates of any previously obtained information if requested by the MLC and keep the MLC ''reasonably informed'' of all data collection efforts. Finally, the interim rule retains the requirement from the proposed rule that DMPs certify to their compliance with these obligations as part of their reports of usage, but the Office does not find it necessary to adopt the additional certification requirement proposed by the MLC. The certification language adopted as proposed in the NPRM is based in part on the MLC's comments to the September NOI.[74]

As with the approach taken in the NPRM, the interim rule establishes a floor for what constitutes good-faith, commercially reasonable efforts.[75] Each DMP will have to decide based on its own circumstances whether the statute requires it to undertake efforts going beyond this floor.[76] The DLC has previously endorsed such an approach, saying the statute is sufficiently specific as to a DMP's data collection obligations so as to make additional regulatory guidance unnecessary.[77]

Although it has eliminated the quarterly reporting requirement in favor of a ''periodic'' standard, the Office finds ARM's characterization of the provision as ''makework'' to be somewhat of an overstatement. While it may be that in many cases, particularly involving more sophisticated sound recording copyright owners or licensors, such requests could yield little or no new information not already provided to DMPs, the record does not establish the futility of such requests across the board. The DLC noted that there are instances where DMPs do request and receive additional metadata from sound recording copyright owners—it explained that, for example, ''record labels sometimes provide blank fields'' for some of the data types DMPs are required to report to the MLC, and ''DMPs may leave that metadata as is,

[62] *Id.* at 22524–25, 22540.

[63] DLC NPRM Comment Add. at A–9–A–10; MLC NPRM Comment App. B.

[64] ARM NPRM Comment at 2. *See also* 85 FR 22518 at 22524 (concluding that ''the MMA did not impose a data delivery burden on sound recording copyright owners and licensors, so any rule compelling their compliance would seem to be at odds with Congress's intent'').

[65] Recording Academy NPRM Comment at 1–2.

[66] MLC NPRM Comment at 8.

[67] *Id.* at 10–11; *see* MLC Reply NOI Comment App. B at 7–8.

[68] MLC NPRM Comment at 11–12.

[69] NMPA NPRM Comment at 3–4; Association of Independent Music Publishers (''AIMP'') NPRM Comment at 3–4; PeerMusic NPRM Comment at 3–4.

[70] DLC NPRM Comment at 7.

[71] ARM NPRM Comment at 7.

[72] *Id.*

[73] *Id.* at 8.

[74] MLC Reply NOI Comment App. at 8.

[75] 85 FR at 22524.

[76] *See id.* (observing what constitutes appropriate efforts under the statute).

[77] DLC Initial NOI Comment at 3 (''Finally, we do not believe any rulemaking is necessary or appropriate with respect to data collection efforts by licensees. The MMA already has specific requirements that do not need to be supplemented by regulation.'').

or, in order to satisfy the ingestion requirements of their particular systems, may fill in the blanks based on their own research *or ask the label to redeliver a more complete set of metadata.*'' [78] Moreover, the statutory provisions on data collection efforts would largely be rendered superfluous if DMPs had no obligations beyond merely passing through what sound recording and musical work information they received from sound recording copyright owners in the ordinary course of business. Congress clearly envisioned that additional efforts would play some role in obtaining data, otherwise it would not have included the provision. Thus, the Office declines to adopt the DLC's proposed clarification that would limit DMPs' obligations to providing just the data it receives from a record label feed.

The Office again declines to mandate that DMPs require delivery of information from sound recording copyright owners and licensors through contractual or other means for the same reasons identified in the NPRM.[79] The Office does, however, presume that at least some DMPs and sound recording copyright owners may include such data delivery obligations in subsequent contracts even absent a regulatory requirement. DMPs have an incentive to ensure they are fulfilling their data collection obligations, and labels are also incentivized to ensure accurate and robust metadata accompanies the licensing and use of their recordings. Relatedly, the Office declines to adopt the most-favored-nation provision proposed by the MLC (and supported by NMPA). In some cases, DMPs may have entered into licensing agreements with sound recording copyright owners that require the provision of sound recording or musical work information; a most-favored-nation provision would under those circumstances obligate DMPs to contractually require other sound recording copyright owners to provide such information or alter existing agreements, a requirement that the Office has previously rejected.[80]

Finally, the MLC highlighted what it considered a ''circularity'' in the data collection requirements.[81] It observed that while the regulations obligate DMPs to obtain sound recording information that is required by the Office to be included in reports of usage, the reports of usage regulations do not ''strictly require'' many items to be reported by DMPs.[82] The MLC argued that the result of this circularity would ''render null'' the obligation to make efforts to obtain sound recording information by DMPs.[83] This was not the Office's intent, and to address the MLC's concerns, the interim rule clarifies that the required categories of information to which DMP data collection obligations apply are without regard to any limitations that may apply to the reporting of such information in reports of usage.[84]

SoundExchange option.

The interim rule retains the proposed ability for DMPs to alternatively satisfy their data collection obligations by arranging for the MLC to receive the required information from an authoritative source of information provided by sound recording copyright owners and other licensors, such as SoundExchange. As the Office noted in its NPRM, ''the record suggests that access to such a sound recording database can be expected to provide the MLC with more authoritative sound recording ownership data than it may otherwise get from individual DMPs engaging in separate efforts to coax additional information from entities that are under no obligation to provide it for purposes of the section 115 license.'' [85] SoundExchange in particular has assembled a large set of data due to its administration of the section 114 license, and since July 22, 2020, has been designated as the authoritative source of ISRC data in the United States.[86] The proposal drew support from a number of commenters; [87] no one, including the MLC, objected to this provision.

Both the DLC and MLC suggested amendments to this option. The DLC proposed language to clarify that the proposed knowledge standard meant ''actual knowledge'' and that the provision does not require ''DMPs to affirmatively engage in a track-by-track assessment of whether a particular sound recording is or is not in the SoundExchange database.'' [88] The MLC essentially seeks the opposite, that a DMP should only be able to use this option where it affirmatively knows that the third-party data source has the relevant information for the relevant recording.[89] The MLC expressed concern that without prematching by a DMP of its library to a third-party database, the job of cross-matching DMP feeds with third-party data would fall on the MLC itself, a project of large scope and scale that it asserts is outside the MLC's core responsibilities.[90] In addition, the MLC noted ''even a source such a[s] SoundExchange does not have data for all of the sound recordings that any particular DMP may stream (as a reminder of scale, even 99 percent coverage of a 50 million track catalog leaves 500,000 tracks not covered).'' It also suggested that the SoundExchange database lacked corresponding musical work metadata for sound recordings in its database,[91] although the MLC subsequently stated that it intends to populate the public database with information from musical works copyright owners, and rely on the same data for matching.[92]

In balancing these interests, the Office is mindful that a main goal underlying the data collection provision is to ensure the MLC is receiving adequate and accurate data to assist in the core task of matching musical works and their owners to the sound recordings that are reported by DMPs, ultimately leading to musical work copyright

[78] DLC Letter July 13, 2020 at 7 (emphasis added). The DLC added, by way of example, ''MediaNet's platform requires certain metadata fields to be present in order to ingest the content itself. MediaNet therefore must fill in the blanks for those data types, either through one-off research or seeking redelivery from the relevant record label.'' *Id.* at 7 n.10.

[79] 85 FR at 22524. The Office explained that ''the MMA did not impose a data delivery burden on sound recording copyright owners and licensors, so any rule compelling their compliance would seem to be at odds with Congress's intent.'' *Id.*

[80] As noted in the NPRM, the Office ''is wary of proposals mandating DMPs to require delivery of information from sound recording copyright owners and licensors through contractual or other means.'' *See id.*

[81] MLC NPRM Comment at 15–17.

[82] *Id.* at 15–16.

[83] *Id.* at 16.

[84] The interim rule also explicitly cross-references the relevant categories of information listed in the report of usage provision rather than enumerating a separate list for collection efforts.

[85] 85 FR at 22524.

[86] SoundExchange *Ex Parte* Letter July 24, 2020 at 1; SoundExchange *Ex Parte* Letter Sept. 1, 2020, at 2; ARM *Ex Parte* Letter July 27, 2020 at 2 (citing RIAA, *RIAA Designates SoundExchange as Authoritative Source of ISRC Data in the United States* (July 22, 2020), *https://www.riaa.com/riaa-designates-soundexchange-as-authoritative-source-of-isrc-data-in-the-united-states/; see also* SoundExchange Initial NOI Comment at 2–3.

[87] ARM NPRM Comment at 2; Recording Academy NPRM Comment at 1–2; DLC NPRM Comment at 7 (''In general, DLC appreciates the Office's decision to create this option for DMPs to satisfy their data collection obligations'').

[88] DLC NPRM Comment at 8.

[89] MLC NPRM Comment at 14–15, App. at viii.

[90] *Id.* at 13–15.

[91] *Id.* at 14. *Compare* ARM NPRM Comment at 9 (describing the Music Data Exchange (''MDX'') system operated by SoundExchange, stating it is ''a central 'portal' that facilitates the exchange of sound recording and publishing data between record labels and music publishers for new releases and establishes a sound recording-musical work link'' and ''a far more efficient source of musical work data for new releases than any metadata various DMPs are likely to receive . . . from the record companies'').

[92] *See* MLC *Ex Parte* Letter Aug. 21, 2020 at 2 (''For musical works information, the MLC maintains that it ''will be sourced from copyright owners.'').

owners receiving the royalties to which they are entitled. The Office acknowledges what it understands to be the MLC's position, that DMPs should be sufficiently motivated to engage in data collection efforts for those edge cases that may not appear in a third-party database, as well as the MLC's concern that the proposed language ''might be misread to imply that, as long as a DMP remains ignorant of exactly which particular sound recordings are not covered by the third party, it can use an incomplete resource to substitute for complete efforts.'' [93] At the same time, however the Office is reluctant to accept the MLC's proposal that DMPs must prematch their libraries against a third-party database to take advantage of this option, as it seems to go so far as to make this option, one that might seemingly aid the MLC as well as individual DMPs, impractical from a DMP perspective.[94]

The Office has therefore adjusted the proposed rule. Under the interim rule, a DMP can satisfy its obligations under this provision by arranging for the MLC to receive the required information from an authoritative source of sound recording information, unless it either has actual knowledge that the source lacks such information as to the relevant sound recording or a set of sound recordings, or has been notified about the lack of information by the source, the MLC, or a copyright owner, licensor, or author (or their respective representatives, including by an administrator or a collective management organization) of the relevant sound recording or underlying musical work. The introduction of this notification provision establishes a mechanism for the MLC or others who are similarly incentivized to identify those gaps. Moreover, for a DMP to use this option, its arrangement with the third-party data source must require that source to report such gaps as are known to it. The Office notes that this provision applies not only to gaps as to specific sound recordings but also gaps as to specific data fields for sound recordings, specific labels and distributors, and specific categories of sound recordings, such as those from missing or underrepresented genres or countries of origin. This approach is intended to empower the MLC and others to notify DMPs regarding areas where it believes the data may fall short, in service of the statutory obligation for each DMP to engage in good faith efforts to obtain this additional data.

[93] *See* MLC NPRM Comment at 14.

[94] *See* DLC NPRM Comment at 8.

2. Efforts by Copyright Owners

The MMA requires musical work copyright owners whose works are listed in the MLC's public database to ''engage in commercially reasonable efforts to deliver to the mechanical licensing collective, [] to the extent such information is not then available in the database, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.'' [95] Many commenters speaking to the issue of musical work copyright owner efforts contended that the proposed rule's requirements were too onerous.[96] The Office did not intend for this aspect of the proposed rule to impose a significantly greater burden on musical work copyright owners than the statute already prescribes.[97] The proposed obligation to ''monitor[] the musical works database for missing and inaccurate sound recording information relating to applicable musical works'' was not meant to require copyright owners to regularly review the entirety of the MLC's database. And while the MLC and others criticize the proposed reference to provision of information within the copyright owner's ''possession, custody, or control,'' [98] that language came from the MLC's comments.[99] Further, the provision referring to delivery to the MLC ''by any means reasonably available to the copyright owner'' was not meant to *compel* delivery by any means reasonably available, but rather *permit* delivery by any such means of the owner's choosing.

Nevertheless, given the comments, the Office is amenable to clarification and acknowledges that under the statute, copyright owners are already incentivized to provide this information to the MLC to help ensure their works are matched and that they receive full and proper royalty payments.[100] Indeed, copyright owners are further incentivized to ensure that the MLC has much greater information, such as about their identity, location, and musical works, than just the sound recording information required by 17 U.S.C. 115(d)(3)(E)(iv) and addressed by this aspect of the proposed rule. Consequently, the Office believes it is reasonable for the interim rule to track the MLC's proposed language, under which musical work copyright owners should provide the applicable sound recording information to the extent the owner has the information and becomes aware that it is missing from the MLC's database.[101]

Regarding the information required to be delivered, the Office again declines the DLC's request to require provision of performing rights organization information.[102] Assuming *arguendo* that the DLC is correct that such a requirement is within the Office's authority to compel, the current record does not indicate that such information is sufficiently relevant to the MLC's matching efforts or the mechanical licensing of musical works so as to persuade the Office to require it to be provided at this time.[103] The MLC, of course, may permissively accept such information, although the MMA explicitly restricts the MLC from licensing performance rights.[104]

C. Reports of Usage and Payment—Digital Music Providers

Commenters raised a number of issues related to the NPRM's provisions covering the form, content, delivery, certification, and adjustment of reports of usage and payment, as well as requirements under which records of

[95] 17 U.S.C. 115(d)(3)(E)(iv).

[96] *See, e.g.,* MLC NPRM Comment at 18–20; Nashville Songwriters Association International (''NSAI'') NPRM Comment at 4; NMPA NPRM Comment at 5–6; Peermusic NPRM Comment at 4; Songwriters Guild of America, Inc. (''SGA'') NPRM Comment at 2–3. *But see* Recording Academy NPRM Comment at 2 (''appreciat[ing] the consideration the Office shows for independent and self-published songwriters who could be vulnerable to overly burdensome requirements and regulations,'' and stating that the ''proposal to adopt a minimal floor requirement is a fair approach, and strikes a proper balance to avoid instituting an undue burden for independent and self-published songwriters''). Regarding SGA's proposal that the MLC have a ''parallel requirement . . . to utilize *best efforts* to provide adequate hands-on help, technical guidance and active assistance to all Copyright Owners in order to prompt the highest achievable level of compliance,'' SGA NPRM Comment at 2, that is beyond the scope of this proceeding, but the MLC's duties are addressed elsewhere in the statute and potentially germane to the Office's ongoing Unclaimed Royalties Study. *See, e.g.,* 17 U.S.C. 115(d)(3)(J)(iii)(II)(bb); 85 FR at 33735.

[97] *See* 85 FR at 22526 (''[T]he Office proposes to codify a minimal floor requirement that should not unduly burden less-sophisticated musical work copyright owners.'').

[98] *See* MLC NPRM Comment at 12 n.4, 19; NMPA NPRM Comment at 5.

[99] *See* MLC Reply NOI Comment at 12 (''[U]nder the MLC's proposal, the musical work copyright owners would be required to provide the sound recording information they actually have in their possession, custody, or control.'').

[100] *See* MLC NPRM Comment at 19 & n.8; NMPA NPRM Comment at 5–6; NSAI NPRM Comment at 4; SoundExchange NPRM Comment at 4.

[101] *See* MLC NPRM Comment App. at viii–ix.

[102] *See* DLC NPRM Comment at 8–9; *see also* 85 FR at 22526.

[103] *See, e.g.,* Recording Academy NPRM Comment at 3 (''[P]erformance rights organization information is not relevant data.''); DLC Initial NOI Comment at 20; MLC Reply NOI Comment at 36.

[104] *See* 17 U.S.C. 115(d)(3)(C)(ii)–(iii).

use must be maintained and made available to the MLC by DMPs.

1. Content of Monthly Reports of Usage

i. Royalty Pool Calculation Information

The MLC proposed that the language regarding usage reporting be ''amended to expressly reference royalty pool information'' to provide what it says is needed clarity.[105] The Office has considered this request but does not currently believe the added language is necessary. Based on its comments, the MLC seems to be referring to the top-line payable royalty pool calculation inputs, such as service provider revenue, total cost of content, performance royalties, and user/subscriber counts.[106] DMPs are already required to report these inputs to the extent they are sufficient to ''allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the royalty owed and the accuracy of the royalty calculations.'' [107]

ii. Sound Recording and Musical Work Information

The interim rule retains the same three tiers of sound recording and musical work information proposed in the NPRM, with some modifications to certain categories of information discussed below.[108] The DLC does not propose eliminating any of the proposed categories [109] and the MLC states that ''[a]ll of the metadata fields proposed in § 210.27(e)(1) will be used as part of the MLC's matching efforts.'' [110] Other commenters concur, including the Recording Academy, which agrees that the ''proposed tiers of information for sound recordings is an accurate interpretation of the statute, identifies a simple and standardized process for the DMPs to follow, and will help improve matching and minimize instances of unclaimed royalties.'' [111] While ARM questions the value of certain categories of information, and seeks to confirm that sound recording copyright owners are not obligated to provide DMPs with data outside of the regular digital supply chain, ARM does not ultimately oppose their inclusion in the rule.[112] As discussed above, although the statute does not place any affirmative obligation on sound recording copyright owners to provide data, it does establish a framework whereby DMPs must engage in appropriate efforts to obtain sound recording and musical work information from sound recording copyright owners that such owners may not have otherwise provided to DMPs.

iii. Playing Time

During the course of the proceeding it came to light that the playing time reported to DMPs by sound recording copyright owners may not always be accurate.[113] Having accurate playing time is critical because it can have a bearing on the computation of royalties.[114] Therefore, in accord with the positions of both the MLC and DLC, the interim rule makes clear that DMPs must report the actual playing time as measured from the sound recording audio file itself.[115]

iv. Release Dates

The proposed rule would require provision of ''release date(s)'' and the NPRM invited comment as to whether this proposed requirement should be explicitly limited to reporting only release years instead.[116] While ARM and the Recording Academy suggested that release years alone are sufficient,[117] FMC contends that it can be useful to have full dates ''[b]ecause it's not uncommon for multiple versions of a track to be released within the same calendar year'' and it ''would help distinguish between the versions to ensure the right publishers and songwriters are compensated if there is any ambiguity, or if other data fields are missing for any reason.'' [118] The MLC and DLC did not comment on this issue.[119] Based on the current record, the Office is not convinced that the requirement should be explicitly limited to only the release year, and has adopted the language as proposed.

v. Sound Recording Copyright Owners

The NPRM proposed that DMPs may satisfy their obligations to report sound recording copyright owner information by reporting three DDEX fields identified by the American Association of Independent Music (''A2IM'') & the Recording Industry Association of America (''RIAA'') as fields that may provide indicia relevant to determining sound recording copyright ownership [120] (to the extent such data is provided to DMPs by sound recording copyright owners or licensors): DDEX Party Identifier (DPID), LabelName, and PLine.[121] In response, the MLC, DLC, and DDEX express concern with using DPID, with DDEX explaining that ''although a unique identifier and in relevant instances an identifier of 'record companies,' [DPID] does not identify sound recording copyright owners,'' but rather ''only identifies the sender and recipient of a DDEX formatted message and, in certain circumstances, the party that the message is being sent on behalf of.'' [122] DDEX further states that ''[i]n the vast majority of cases . . . the DPIDs . . . will not be attempting to identify the copyright owner of the sound recordings.'' [123] The MLC agrees, explaining that DPID ''does not identify sound recording copyright owner, but rather, the sender and/or recipient of a DDEX-formatted message.'' [124] ARM

[105] MLC NPRM Comment at 40–41.

[106] *Id.* at 40; *see also* 37 CFR 385.21–385.22.

[107] Interim rule at section 210.27(d)(1)(i). For similar reasons, the Office is not amending section 210.27(d)(1)(ii), to which the MLC proposed adding the same language.

[108] *See* 85 FR at 22530–32, 22541–42.

[109] DLC NPRM Comment Add. at A–15–16.

[110] MLC Letter July 13, 2020 at 7.

[111] Recording Academy NPRM Comment at 2 (''[T]he Academy appreciates and concurs with the Office's proposal to include certain additional data fields that will prove beneficial in the matching efforts.''); *see, e.g.,* SONA & MAC NPRM Comment at 2, 6 (''Additional data fields proposed to be added by the Office . . . will also play a critical role in identification and matching efforts.''). The Office declines SONA & MAC's request ''to elevate [the second and third tiers of information] to the first tier of mandatory information.'' *See* SONA & MAC NPRM Comment at 6–7. Much of the second and third tier information is enumerated in the statute, which expressly states that it be provided ''to the extent acquired.'' *See* 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa)–(bb); *see also* 85 FR at 22531 (rejecting a similar request from the MLC).

[112] *See* ARM NPRM Comment at 9, 11. The Office disagrees with ARM's suggestion to delete the requirement that DMPs report ''[o]ther information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.'' *See id.* at 9. That requirement is enumerated in the statute. 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa).

[113] ARM NPRM Comment at 6–7; DLC Letter July 13, 2020 at 4, 7; DLC *Ex Parte* Letter July 24, 2020 at 4.

[114] *See* 37 CFR 385.11(a), 385.21(c).

[115] *See* DLC *Ex Parte* Letter July 24, 2020 at 4 n.12 (''DLC would not oppose a requirement to report, in all instances, the playing time value based on the processing of the actual sound recording file, rather than the value reported by the label.''); MLC *Ex Parte* Letter July 24, 2020 at 9 (''Playing Time could be reported either as the unaltered version or as calculated automatically based upon an analysis of the audio file being streamed.'').

[116] *See* 85 FR at 22525, 22541.

[117] ARM NPRM Comment at 7; Recording Academy NPRM Comment at 2–3.

[118] FMC NPRM Comment at 2–3.

[119] *See* DLC NPRM Comment Add. at A–15; MLC NPRM Comment App. at xv.

[120] During the proceeding, RIAA submitted comments both individually and jointly with other commenters, including with A2IM. A2IM and the RIAA also submitted comments together under the name of an organization called the Alliance for Recorded Music (''ARM''). References herein are to the name used in each respective comment (*e.g.,* ''RIAA,'' ''A2IM & RIAA,'' ''ARM,'' etc.).

[121] 85 FR at 22532, 22542.

[122] Digital Data Exchange, LLC (''DDEX'') NPRM Comment at 2; *see* DLC Letter July 13, 2020 at 10–11; DLC *Ex Parte* Letter July 24, 2020 at 5 n.15; MLC *Ex Parte* Letter July 24, 2020; *see also* A2IM & RIAA Reply NOI Comment at 8–9, 11.

[123] DDEX NPRM Comment at 2.

[124] MLC NOI Comment at 13, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/document/COLC-2020-0006-0001.*

does not dispute this position, but suggests that DPID should nonetheless be retained because its inclusion in the public musical works database ''will be useful to members of the public who are looking for a [sound recording] licensing contact.'' [125] By contrast, the DLC contends that DPID ''is not a highly valuable data field,'' and that the burden of converting DPID numerical codes into parties' names (to address ARM's concern about displaying the numerical identifier) outweighs ''the benefit that would accrue from requiring DMPs to convert DPID numerical codes into parties' names.'' [126]

Having considered these comments, it seems that DPID may not have a strong connection to the MLC's matching efforts or the mechanical licensing of musical works. In light of this, and the commenters' concerns, the Office declines at this time to require DMPs to report DPID, although they are not precluded from reporting it. In concurrent rulemakings, the Office is separately considering related comments regarding the display of information provided through fields relevant to the statutory references to ''sound recording copyright owners'' in the public musical works database and in royalty statements provided to copyright owners.[127]

vi. Audio Access

The NPRM proposed requiring DMPs to report any unique identifier assigned by the DMP, including any code that can be used to locate and listen to the sound recording on the DMP's service.[128] In doing so, the NPRM adopted the DLC's proposal that DMPs provide these in lieu of the audio links the MLC had requested.[129] The NPRM described the dispute on this point, and noted that ''while the [MLC's] planned inclusion of audio links [in its claiming portal] is commendable, the record to date does not establish that the method by which the MLC receives audio links should be a regulatory issue, rather than an operational matter potentially resolved by MLC and DLC members, including through the MLC's operations advisory committee.'' [130] The Office concluded that it ''declines at this time to propose a rule including audio links in monthly reporting, but encourages the parties, including individual DLC members, to further collaborate upon a solution for the MLC portal to include access to specific tracks (or portions thereof) when necessary, without cost to songwriters or copyright owners. The Office hopes that this matter can be resolved after the parties confer further, but remains open to adjusting this aspect of the proposed rule if developments indicate it is necessary.'' [131]

Despite the Office's encouragement, this issue has not yet been resolved, although the parties provided additional information underlying their respective positions. The MLC maintains that audio links should be included in monthly reports of usage, stating they are ''a critical tool for addressing the toughest of the unmatched.'' [132] The MLC states that it does not seek to host any copies of the audio on its own servers but rather link to audio files residing on the DMPs' respective servers; it further proposes to limit audio access to registered users of its password-protected claiming portal, to provide audio only for unmatched uses, and to limit access to 30-second previews or samples of the audio.[133] NSAI, SONA & MAC, and the MLC Unclaimed Royalties Oversight Committee also submitted comments discussing the importance of audio access in identifying unmatched works.[134] NSAI, for example, reiterates a concern previously raised by the MLC that songwriters may need to purchase subscriptions to the majority of the DMPs' services to be able to actually use the proposed unique identifiers to listen to the audio.[135] The DLC's comments to the NPRM do not address this issue, although it reported separate engagement on the subject with the MLC.[136] ARM supports the use of unique identifiers instead of links, but does not object to links ''to the extent that the MLC seeks the audio links solely for inclusion in its private, password-protected claiming portal in order to assist musical work copyright owners in identifying and claiming their works,'' and ''provided that the links take the user to the DMPs, that no audio files reside on the MLC's servers and that links are only provided for unmatched works.'' [137] ARM seeks to ensure that the MLC's portal and database do not become ''a free online jukebox that competes with DMPs.'' [138]

In light of these comments, to help progress the rulemaking, the Office sent a letter to these parties seeking additional information and responses to specific questions on this issue.[139] The Office then held an *ex parte* meeting with these commenters to further discuss the matter, which was followed up with additional written submissions.[140]

These efforts revealed further details concerning how the MLC intends to use sound recording audio obtained through DMP reporting and the obstacles DMPs face in accommodating what the MLC seeks. For example, the MLC confirms that it does not intend to make or host any copies of such sound recordings, or use audio access to undertake matching efforts involving digital fingerprinting

[125] ARM *Ex Parte* Letter July 27, 2020 at 4. ARM does not object to including the DPID party's name in the public musical works database, but does ''object to the numerical identifier being disclosed, as the list of assigned DPID numbers is not public and disclosing individual numbers (and/or the complete list of numbers) could have unintended consequences.'' ARM NPRM Comments at 10, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001*.

[126] DLC Letter July 13, 2020 at 10 (stating that while converting the DPID numerical code into the party's actual name for reporting purposes ''is conceptually possible'' for DMPs, ''it would require at least a substantial effort for some services'' (around one year of development), and ''would be an impracticable burden for some others'').

[127] *See, e.g.,* RIAA Initial NOI Comment at 2–3; A2IM & RIAA Reply NOI Comment at 8–10; ARM NOI Comment at 4, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/document/COLC-2020-0006-0001; see also* U.S. Copyright Office, Notice of Proposed Rulemaking, *The Public Musical Works Database and Transparency of the Mechanical Licensing Collective,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**; U.S. Copyright Office, Interim Rule, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[128] 85 FR at 22530–31, 22541.

[129] *Id.* at 22530–31. The Office understands that an audio link is a unique identifier, but not necessarily the other way around, as some services use different types of unique identifiers, such as numbers or codes rather than links, which can be used within a platform to access a given recording.

[130] *Id.* at 22531.

[131] *Id.*

[132] MLC NPRM Comment at 39–40.

[133] *Id.* at 39–40, 39 n.12, App. at xiv.

[134] NSAI NPRM Comment at 4–5 (''The most difficult sound recordings to match will be those that have substantially missing or inaccurate metadata. In these situations, there may be no other possible way to make a match except through the audio.''); SONA & MAC NPRM Comment at 7–8; MLC Unclaimed Royalties Oversight Committee NPRM Comment at 2–5 (''[A] readily available audio reference is the easiest, most reliable and transparent way to confirm ownership of a song.'').

[135] NSAI NPRM Comment at 5; *see* MLC *Ex Parte* Letter Apr. 3, 2020 at 5(''[I]t would be unfair, and economically infeasible for many songwriters, to require the purchase of monthly subscriptions to each DMP service in order to fully utilize the statutorily-mandated claiming portal.'').

[136] DLC Letter June 15, 2020 at 1.

[137] ARM NPRM Comment at 3.

[138] *Id.*

[139] U.S. Copyright Office Letter June 8, 2020; *see* DLC Letter June 15, 2020; MLC Letter June 15, 2020; MLC Unclaimed Royalties Oversight Committee Letter June 15, 2020.

[140] *See* DLC *Ex Parte* Letter June 23, 2020; MLC *Ex Parte* Letter June 23, 2020; MLC Unclaimed Royalties Oversight Committee *Ex Parte* Letter June 23, 2020; MAC *Ex Parte* Letter June 23, 2020; NSAI *Ex Parte* Letter June 24, 2020; RIAA *Ex Parte* Letter June 22, 2020; SONA *Ex Parte* Letter June 23, 2020; DLC Letter July 8, 2020; MLC Letter July 8, 2020; RIAA Letter July 8, 2020.

analysis (though the MLC says it ''will explore a more systematic and direct process'' for utilizing audio content analysis to help reduce the incidence of unmatched works).[141] It appears to the Office that what the MLC essentially wants is for its claiming portal to have an embedded player (or something similar) where, even though the audio files still reside with the DMPs, portal users would be able to listen to the audio directly within the portal environment without having to link out or navigate away to each DMP's service.[142] The DLC raises numerous concerns with what the MLC seeks, which it summarizes as ''three main problems, which are interrelated: (1) The use case for the audio links is overly vague and requires better definition and development; (2) there are significant licensing issues impacting (and currently, prohibiting) the MLC from streaming music or the DMPs from streaming music outside of their services; and (3) there are significant technological challenges that make the MLC's proposal unripe for regulation, and in some instances would likely render it cost-prohibitive.'' [143] Notably, the DLC asserts that while ''[a]ll DLC members use unique identifiers for tracks,'' [144] ''[t]he idea of a persistent, clickable 'audio link' to be used as the MLC describes simply does not exist today.'' [145] The RIAA also expresses concern over licensing issues, as well as content protection, and states that the ''simplest approach is to have DMPs provide web links that take portal users directly to the referenced track or parent album on the DMP's service.'' [146]

Despite concerns with the manner in which the MLC seeks to provide portal users with audio access, the DLC agrees that the availability of audio can improve the incidence of unmatched works, and emphasizes its commitment and willingness to work on this issue further with the MLC, including through the operations advisory committee.[147] The MLC concedes that unique identifiers ''could be acceptable if instructions were also provided to convert the identifiers into links to provide [no-cost audio] access to portal users.'' [148] But the MLC prefers that the Office adopt a rule specifically requiring the provision of links, even though the MLC also seems to agree that there is much left to be worked out between the MLC and the DMPs to implement such a requirement. To that end, the MLC proposes an additional provision that it says ''provides a framework to support and address any audio link implementation concerns while maintaining the acknowledged imperative of reaching the goal, and also delivers flexibility by explicitly providing for the Register to adjust the commencement date for the audio link usage reporting, if appropriate, based upon [joint reporting of implementation obstacles and responsive strategies] from the MLC and DLC.'' [149] Absent such adjustment, however, the MLC's proposed approach would require DMPs to provide audio links in monthly reports of usage as early as the first reporting period, a condition the DLC represents is not operationally possible. The DLC's most recent submission on this issue contains information describing the degree of audio access that can be obtained using the unique identifiers assigned by each DLC member and instructions on how to use the identifiers to obtain such access.[150] From this information, it appears that most tracks (or at least 30-second clips of most tracks), with relatively few exceptions, can be accessed for free through most DLC members' services using a unique identifier, and that for most DLC members, the way the unique identifier is used is by plugging it into a URL that can be used either in the address bar of a web browser or to create a hyperlink.[151] Indeed, the DLC states

[141] MLC Letter June 15, 2020 at 6–7; MLC *Ex Parte* Letter June 23, 2020 at 2; *see also* SONA & MAC NPRM Comment at 7–8 (''[T]he ability to employ 'fingerprinting' technology to compare unidentified audio files to known sound recordings would augment and improve matching and claiming efforts.'').

[142] *See* MLC *Ex Parte* Letter June 23, 2020 at 2–3; MLC Letter June 15, 2020 at 5–6, 6 n. 5; DLC *Ex Parte* Letter June 23, 2020 at 2.

[143] DLC *Ex Parte* Letter June 23, 2020 at 1–2; *see also id.* at 2–6; DLC Letter June 15, 2020 at 2–5. The DLC also disputes the MLC's assertions that this has been done before in other contexts. DLC *Ex Parte* Letter June 23, 2020 at 2 (''[T]hese claiming portals do not contain audio assets and users cannot listen to tracks directly within the portals; instead, and only in the case of certain DMP agreements, users are redirected to the DMP's individual service, where they can listen to the track after logging in.''); DLC Letter July 8, 2020 at 2.

[144] DLC Letter June 15, 2020 at 5; *see also* MLC *Ex Parte* Letter June 23, 2020 at 2 (''[A] unique DMP identifier is already reported under the DDEX DSRF standard.'').

[145] DLC *Ex Parte* Letter June 23, 2020 at 3.

[146] RIAA Letter July 8, 2020 at 1–2 (''[R]equiring every DMP to build an embedded audio player that can be incorporated into the MLC portal will mean DMP/label contract amendments and expensive service functionality changes that could introduce security holes leading to piracy and loss of revenue.''); RIAA *Ex Parte* Letter June 22, 2020 at 2 (''[I]t would be inappropriate for the Copyright Office to issue regulations that would have the effect of mandating that certain terms be included in private marketplace deals between record companies and DMPs.'').

[147] DLC Letter June 15, 2020 at 1; DLC *Ex Parte* Letter June 23, 2020 at 1, 3–4, 5–6; DLC Letter July 8, 2020 at 2.

[148] MLC *Ex Parte* Letter June 23, 2020 at 2–3 (''Whatever process is used to resolve the stable DMP identifier into the audio access is the relevant process.''); MLC Letter June 15, 2020 at 5–6, 6 n.5; *see also* MLC Unclaimed Royalties Oversight Committee Letter June 15, 2020 at 2 (seeking that ''[r]ights holders are entitled to full & frictionless transparency, for themselves and for their clients to whom they are accountable,'' though ''defer[ring] to The MLC's position on this from an operational perspective'').

[149] MLC Letter July 8, 2020 at 2, Ex. A. *See* MLC *Ex Parte* Letter June 23, 2020 at 2–4; *see also* NSAI *Ex Parte* Letter June 24, 2020 at 1(''The USCO must mandate a set timeline and framework for DSPs to be able to provide those audio links.''); MAC *Ex Parte* Letter June 23, 2020 at 2 (asking the Office ''to adopt a rule requiring DMPs to provide such links even if DMPs are not able to make the audio files immediately available'' by the license availability date, and observing that there is a ''lack of agreement on how to coordinate the operationalization of these links within the MLC claiming portal''); SONA *Ex Parte* Letter June 23, 2020 at 2 (same).

[150] DLC Letter July 8, 2020 Add.

[151] *See* DLC Letter July 8, 2020 Add. For example, for Amazon, the URL formula is *https://music.amazon.com/albums/;album ID/track ID. Id.* at 3. According to the DLC, and from some spot-testing by the Office, it appears that the degree of audio access currently offered by each DLC member is as follows:

Amazon's unique identifiers can be converted into URLs (an album identifier and track identifier are needed) and used to locate tracks, but a subscription is required to listen to a specific track on demand. *See id.* at 3–4.

Apple's unique identifiers can be converted into URLs and used to locate and listen to ''30-second clips of tracks . . . without a login or subscription.'' *See id.* at 5–6.

Google/YouTube's unique identifiers can be converted into URLs or entered into a search bar and can be used to locate and listen to full tracks without a login or subscription, except for ''[a] small percentage of content [which] requires a subscription for access (per label policy).'' *See id.* at 7–9.

Pandora's unique identifiers can be converted into URLs and used to locate and listen to full tracks without a subscription by launching an ad-based ''Premium Session'' within a free tier account. ''In some instances, the URL navigates to a different version of the same sound recording (*e.g.,* studio release vs. 'best of').'' *See id.* at 10–11.

Qobuz's unique identifiers can be converted into URLs and used to locate and listen to ''30-second clips of most tracks . . . without a login or subscription.'' *See id.* at 12–13.

SoundCloud's unique identifiers can be converted into URLs (an artist name, song title, and track identifier are needed) and used to locate and listen to ''30-second clips of most tracks . . . without a login or subscription[.] A small percentage of content is not available for 30-second clips and requires a subscription for access (per label policy).'' *See id.* at 14–17.

Spotify's unique identifiers can be entered into a search bar and used to locate and listen to full tracks without a subscription by using a free tier, ad-based account. It appears that access may be more limited when using Spotify's mobile app. Spotify's unique identifiers can also be used to generate an embeddable player. ''Certain 30-second clips may be available without logging in depending on the terms of label agreements.'' *See id.* at 18–22.

Tidal's unique identifiers can be converted into URLs and used to locate and listen to ''30-second clips of all tracks . . . without a login or subscription.'' *See id.* at 23–25.

MediaNet ''does not own or operate a consumer-facing service in which playing audio tracks is

that the MLC ''should easily be able to add functionality to convert the unique DMP identifier into a clickable URL on the portal.'' [152] It further appears that at least one major DMP (Spotify) already offers an embeddable player that the MLC can integrate into its portal so users can listen without navigating away.[153]

After careful consideration of the record on this issue, the Office concludes that the proposed rule should be modified. The interim rule retains the requirement to report unique identifiers instead of audio links, but with important changes. First, the rule requires DMP-assigned unique identifiers, including unique identifiers that can be used to locate and listen to reported sound recordings, to always be reported, subject to exceptions discussed below, in contrast to the proposed rule which was limited to ''if any.'' In consideration of the importance of audio access emphasized by the MLC and others, the DLC's agreement that audio access can improve the incidence of unmatched works, and the fact that the Office has not been made aware of any DMP that does not currently use unique identifiers for its tracks, the Office believes this to be a reasonable change that will facilitate access of audio when necessary for matching and claiming purposes.[154]

Second, in light of being informed that one of the DLC's members does not operate its own consumer-facing service,[155] the proposed language referring to access being through the DMP's public-facing service has been dropped. In its place, the interim rule instead requires DMPs to provide clear instructions describing how their unique identifiers can be used to locate and listen to the reported sound recordings. This approach requires that audio access be obtainable, but flexibly allows each DMP to specify how such access may be achieved in accordance with its licensed offerings. For example, it could be by using an identifier as part of a URL or as part of a service's search function. A DMP without its own consumer-facing service could provide instructions on how unique identifiers can be used to access audio through a service it supports, or otherwise provide some kind of customer service mechanism.

With respect to these changes, the Office is cognizant that if a DMP's unique identifiers cannot currently be used to obtain audio access, it may take some time for the DMP to be able to fully comply with the interim rule. Consequently, the rule includes a one-year transition period for a DMP that is not already equipped to comply to begin reporting unique identifiers that can be used to locate and listen to sound recordings, accompanied by clear instructions describing how to do so. To make use of the transition period, the DMP will need to notify the MLC and describe any implementation obstacles. The DMP will also still need to report DMP-assigned unique identifiers generally; the transition period is only, as needed, for identifiers and instructions relating to audio access. Nothing, of course, prevents an eligible DMP from providing this information before the end of the transition period.

Third, since the MLC and others [156] agree they are adequate, and the DLC states that several DMPs already provide free access to them,[157] the interim rule permits DMPs, in their discretion, to limit audio access to 30-second clips.

The interim rule's updated approach is intended to better ensure that, subject to the transition period, audio can be accessed where necessary for the MLC's duties. Based on the record, for most tracks on most DLC-member services, such access is currently available to users without a paid subscription and can be obtained using URLs, thus largely achieving what the MLC and others seek. To help ensure that current levels of access are not reduced in the future, the interim rule includes a provision restricting DMPs from imposing conditions that materially diminish the degree of access to sound recordings in relation to their potential use by the MLC or its registered users in connection with their use of the MLC's claiming portal. For example, if a paid subscription is not required to listen to a sound recording as of the license availability date, the DMP should not later impose a subscription fee for users to access the recording through the portal. This restriction does not apply to other users or methods of accessing the DMP's service (including the general public), if subsequent conditions resulting in diminished access are required by a relevant licensing agreement, or where such sound recordings are no longer made available through the DMP's service.

In promulgating this aspect of the interim rule, the Office notes that the MLC, DLC, and others have suggested that further operational discussions may be fruitful. A seamless experience using embedded audio is a commendable goal worthy of further exploration, but in the meantime, where significant engineering, licensing, or other unresolved hurdles stand in the way, providing hyperlinks in the portal—which it seems can be done at present for most DLC-member services based on the record—or other identifiers that permit access to a recording appears to be a reasonable compromise.[158]

But to incentivize future discussions, the interim rule includes a provision, similar to the MLC's proposal, requiring the MLC and DLC to report to the Office, over the next year or as otherwise requested, about identified implementation obstacles preventing the audio of any reported sound recording from being accessed directly or indirectly through the portal without cost to portal users, and any other obstacles to improving the experience of portal users. Such reporting should also identify an implementation strategy for addressing any identified obstacles, and any applicable progress made. The Office expects such reporting will help inform it as to whether any modifications to the interim rule prove necessary on this subject, and facilitate continued good-faith collaboration through the MLC's operations advisory committee.

Finally, the reporting should also identify any agreements between the MLC and DMPs to provide for access to relevant sound recordings for portal users through an alternate method rather than by reporting unique identifiers (*e.g.,* separately licensed solutions). The interim rule provides that if such an alternate method is implemented pursuant to any such

possible for any purpose[.] Accordingly, MediaNet does not have a publicly accessible search function that uses unique identifiers as inputs; MediaNet utilizes unique links that are usable for a single play only.'' *See id.* at 26–27.

[152] DLC Letter July 8, 2020 at 1.

[153] DLC Letter July 8, 2020 Add. at 18–19.

[154] *See* DLC Letter June 15, 2020 at 5 (''All DLC members use unique identifiers for tracks.'').

[155] *See* DLC *Ex Parte* Letter June 23, 2020 at 3 n.7; DLC Letter July 8, 2020 Add. at 27.

[156] *See, e.g.,* NSAI *Ex Parte* Letter June 24, 2020 at 1 (''[E]ven a 15–20 second audio clip would suffice.'').

[157] *See* DLC Letter July 8, 2020 Add. at 5, 12, 14, 18, 23.

[158] Some commenters raised the issue of audio deduplication in the claiming portal. *See* DLC *Ex Parte* Letter June 23, 2020 at 5 (asking ''whether and how the MLC's portal would 'de-duplicate' files so that a user does not need to listen through the same song 10 times on 10 different services''); RIAA Letter July 8, 2020 at 2 (''[W]ill portal users be required to listen to every unidentified track on every service (which is not realistic) or does the solution leverage recording industry standard identifiers such as ISRC codes so that identifying a track once is sufficient (because the track has the same ISRC across all services).''). The Office is addressing audio deduplication in the portal and public musical works database in a parallel rulemaking. *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *The Public Musical Works Database and Transparency of the Mechanical Licensing Collective,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

agreement, the requirement to report identifiers and instructions to obtain audio access is lifted for the relevant DMP(s) for the duration of the agreement. The purpose of this provision is to provide flexibility for the MLC and DMPs to collaboratively find other mutually agreeable ways of ensuring relatively easy audio access to portal users seeking to identify works.

vii. Altered Data

One of the more contested issues in this proceeding concerns the practice of DMPs sometimes altering certain data received from sound recording copyright owners and other licensors for normalization and display purposes in their public-facing services, and whether DMPs should be permitted to report the modified data to the MLC or instead be required to report data in the original unmodified form in which it is received. The NPRM explained that: ''[A]fter analyzing the comments and conducting repeated meetings with the MLC, DLC, and recording company and publishing interests, it is apparent to the Copyright Office that abstruse business complexities and misunderstandings persist . . . . [I]t is not clear that the relevant parties agree on exactly which fields reported from sound recording owners or distributors to DMPs are most useful to pass through to the MLC, which fields the MLC should be expected or does expect to materially rely upon in conducting its matching efforts, or which fields are typical or commercially reasonable for DMPs to alter.'' [159] Ultimately, the Office explained that: ''The Office has essentially been told by the DLC that retaining and reporting unaltered data is generally burdensome and unhelpful for matching, while the MLC and others argue that it is generally needed and helpful for matching. Both positions seem to have at least some degree of merit with respect to certain aspects. The Office therefore offers what it believes to be a reasonable middle ground to balance these competing concerns.'' [160] The proposed middle ground was one where altered data could be reported, but subject to what the Office believed to be meaningful limitations. The first limitation was that DMPs would have been required to report unaltered data in any of the following three cases: (1) Where the MLC has adopted a nationally or internationally recognized standard, such as DDEX, that is being used by the particular DMP, and either the unaltered version or both versions are required to be reported under that standard; (2) where either the unaltered version or both versions are reported by the particular DMP pursuant to any voluntary license or individual download license; or (3) where either the unaltered version or both versions were periodically reported by the particular DMP to its licensing administrator or to copyright owners directly prior to the license availability date. The second limitation was that DMPs would not have been permitted to report only modified versions of any unique identifier, playing time, or release date. The third limitation was that DMPs would not have been permitted to report only modified versions of information belonging to categories that the DMP was not periodically altering prior to the license availability date.

In response, the MLC and others reject the proposed approach, reasserting that having unaltered data is imperative for matching, and arguing that the DLC has not sufficiently supported its assertions of DMP burdens associated with reorienting existing reporting practices.[161] The DLC objects to most of the conditions under the first limitation described above (the first and third scenarios),[162] but does not object to the second or third limitations.[163] ARM also commented regarding its members' equities on this subject, but noted its ''primary concern,'' rather than MLC matching efforts, ''is ensuring that all sound recording data that ultimately appears in the MLC's public-facing database is as accurate as possible and is taken from an authoritative source (*e.g.,* SoundExchange).'' [164] To that end, ARM states that while ''sympathetic to the operational challenges'' that would be created by requiring DMPs to maintain a ''parallel archive'' of data, ''this task would be made easier if the DMPs were required to populate their monthly reports of usage with only unaltered data.'' [165]

In light of these comments, and at ARM's suggestion,[166] the Office sent a letter seeking additional information from the MLC and DLC on this issue.[167] The Office then held an *ex parte* meeting with the commenters on this matter, which was followed up with additional written submissions.[168] Although the MLC and DLC largely maintain the same general positions about burdens and usefulness for matching, these efforts have revealed additional helpful information, discussed below.

In light of the further-developed record, the Office has made certain revisions to the proposed rule. First, the rule has been clarified or adjusted in light of a few areas of agreement. The relevant provisions on altered data no longer apply to playing time because, as discussed above, actual playing time must be reported by DMPs. The interim rule also clarifies, as the DLC requests and as the MLC agrees, that where the regulations refer to modifying data, modification does not include the act of filling in or supplementing empty or blank data fields with information known to the DMP, nor does it include updating information at the direction of the sound recording copyright owner or licensor (such as when a record label may send an email updating information previously provided in an ERN message).[169] The modification at issue is modification of information actually acquired from a sound recording copyright owner or licensor that the DMP then changes in some fashion without being directed to by the owner or licensor.[170]

The interim rule has also removed the reference requiring reporting of unaltered data where this reporting is required by a nationally or internationally recognized standard that has been adopted by the MLC and used by the particular DMP, *e.g.,* DDEX.[171] At bottom, although this provision was intended to allow room for future

[159] 85 FR at 22523.

[160] *Id.* at 22525.

[161] MLC NPRM Comment at 21–26, App. at xvi–xvii; *see, e.g.,* NMPA NPRM Comment at 6–9; Peermusic NPRM Comment at 2–3.

[162] DLC NPRM Comment at 5–7, Add. at A–16–17.

[163] DLC NPRM Comment Add. at A–17.

[164] ARM NPRM Comment at 6–7. The Office is addressing the display of sound recording data in the public musical works database in a parallel rulemaking. *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *The Public Musical Works Database and Transparency of the Mechanical Licensing Collective,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

[165] ARM NPRM Comment at 6.

[166] *Id.* (''If the Office wishes to convene some sort of informal stakeholder meeting to explore solutions to this particular issue, we and relevant executives from our member companies would be happy to participate in such a process. SoundExchange . . . should also be included in any such meeting.'').

[167] U.S. Copyright Office Letter June 30, 2020; *see* DLC Letter July 13, 2020; MLC Letter July 13, 2020.

[168] *See* ARM *Ex Parte* Letter July 27, 2020; DLC *Ex Parte* Letter July 24, 2020; MLC *Ex Parte* Letter July 24, 2020; SoundExchange *Ex Parte* Letter July 24, 2020.

[169] *See* DLC NPRM Comment at 5, Add. at A–16–17; DLC Letter July 13, 2020 at 7–8; MLC Letter July 13, 2020 at 2; MLC *Ex Parte* Letter July 24, 2020 at 9.

[170] *See* MLC Letter July 13, 2020 at 2 (''If, for example, a sound recording copyright owner conveyed generally to DMPs a request to update Title metadata for a particular licensed sound recording, the new title should qualify as metadata 'acquired from' the sound recording copyright owner.'').

[171] *See* 85 FR at 22525.

consensus to emerge among relevant copyright owners and DMPs through their chosen participation in non-governmental standards-setting processes, the comments suggest the parties would prefer clear and immediate direction from the Office. The MLC, DLC, and others are in agreement that this provision should be eliminated.[172] In the case of DDEX, the MLC and others explain that, if DMPs do not want to report unaltered data (or anything else for that matter), it is unlikely that a consensus will be reached for DDEX to mandate such reporting, absent regulation.[173] Conversely, the DLC expresses concern that future changes adopted by a standards-setting body could expand the categories of information otherwise required by the rule to be reported unaltered, in its view effectively delegating future adjustments to the rule.[174] As the commenters recognize, any changes that may need to be made to DDEX's standards to accommodate the Office's regulations will either need to be pursued by the parties or some other reporting mechanism will need to be used.[175]

Turning to the larger question regarding altered data and its role in matching, the DLC characterizes the issue as a marginal one and notes that DMPs only make minor, mostly cleanup, modifications to a fraction of fields for a small fraction of tracks (estimated at less than 1%).[176] It asserts that the MLC's matching processes should be sophisticated enough to overcome these alterations, and that the MLC should be able to use an ISRC, artist, and title keyword to identify over 90% of recordings through automated matching by using SoundExchange's database.[177] In the DLC's words, ''[i]t should be (and is) the MLC's job to construct technological solutions to handle those minor differences in the matching process, not DMPs' job to re-engineer their platforms, ingestion protocols, and data retention practices so that the MLC receives inputs it likely does not require.'' [178] (Relatedly, ARM strongly opines that the ISRC is a reliable identifier, noting that all ARM members distribute tracks pursuant to direct licenses that require provision of ISRCs to the DMPs, and that all major record labels use ISRCs to process royalties.[179] SoundExchange subsequently supplied further information regarding the effectiveness and reliability of ISRC identifiers.[180]) The DLC also explains that providing unaltered data is challenging because ''label metadata isn't simply saved wholesale in a single table,'' but instead ''is processed and divided into a number of different systems built for distinct purposes, and royalty accounting systems pull from those various systems for purposes of generating a report,'' and ''[i]t is that entire chain that would need to be reengineered to ensure that label metadata is passed through in unaltered form.'' [181] But ultimately, the DLC characterizes the incremental costs to provide at least limited types of unaltered data, as compared to the costs of creating the broader DMP-to-MLC reporting infrastructure, as ''minimal'' for most DMPs and requests that if the scope of unaltered data is expanded then DMPs be given a one-year transition period to comply.[182] The DLC further states that ''[m]any DMPs do not alter metadata at all.'' [183] Lastly, the DLC notes that at least some DMPs have not maintained the original unaltered data, meaning they no longer have it available to report ''for the tens of millions of tracks currently in their systems.'' [184] The DLC and ARM oppose any rule requiring DMPs to recreate this data from new feeds from sound recording copyright owners.[185]

In contrast, the MLC generally argues that receipt of the sound recording copyright owner or licensor's unaltered data is critical for proper and efficient matching, explaining how its absence can frustrate and obstruct automated efforts.[186] The MLC asserts that this will lead to more tracks needing to be matched manually, and that manual matching is made all the more difficult where an unknown multiplication of different data variations are reported due to DMP alteration.[187] While the MLC concedes that it will need to deal with other data issues, it says that ''there is no 'inefficiency cap' when it comes to metadata inconsistencies,'' and that ''each additional metadata inconsistency compounds the previous one and makes the process even harder as they synergise with each other.'' [188] The MLC states that it is impossible to quantify to what extent permitting reporting of altered data will affect matching because there are too many unknown variables about the scope of DMP alterations, but nonetheless argues that this is not as minor an issue as the DLC characterizes it.[189] Rather, the MLC contends that even if only a small fraction of 1% of tracks are implicated, given the number of DMPs and the massive size of their libraries, ''it could

[172] *See* DLC NPRM Comment at 5, 10; MLC NPRM Comment at 22–23; NMPA NPRM Comment at 8–9; Peermusic NPRM Comment at 3; MLC *Ex Parte* Letter July 24, 2020 at 7.

[173] *See* MLC NPRM Comment at 22–23; NMPA NPRM Comment at 8–9; MLC *Ex Parte* Letter July 24, 2020 at 7; *see also* DLC Letter July 13, 2020 at 9 (acknowledging that ''DDEX is a consensus-driven organization'').

[174] DLC NPRM Comment at 5 (raising practical questions such as whether optional fields would be required for reporting or whether the rule would account for different versions of the relevant standard).

[175] *See* MLC NPRM Comment at 23; NMPA NPRM Comment at 8–9; Peermusic NPRM Comment at 3; ARM NPRM Comment at 10; MLC *Ex Parte* Letter July 24, 2020 at 7.

[176] DLC Letter July 13, 2020 at 2–4; DLC *Ex Parte* Letter July 24, 2020 at 2–3.

[177] DLC Letter July 13, 2020 at 2–4 (''[T]he MLC's continued insistence on regulating the nuances of highly variegated metadata practices reflects a failure of prioritization. . . . Hairsplitting among metadata fields . . . is not mission-critical.''); DLC *Ex Parte* Letter July 24, 2020 at 2–3.

[178] DLC Letter July 13, 2020 at 2 (''Even on the altered fields, it should be trivial to construct 'fuzzy' search or matching technologies that render immaterial the differences between original and altered data.''); DLC *Ex Parte* Letter July 24, 2020 at 3 (''If the MLC's matching algorithm cannot handle simple variations like 'The Beatles' versus 'Beatles, The,' it needs to adopt a better algorithm.'').

[179] *See* ARM *Ex Parte* Letter July 27, 2020 at 2. According to ARM, the companies it represents ''collectively create, manufacture and/or distribute nearly all of the sound recordings commercially produced and distributed in the United States.'' ARM NPRM Comment at 1. ARM also informs that the RIAA has designated SoundExchange as the authoritative source of ISRC data in the United States. ARM *Ex Parte* Letter July 27, 2020 at 2.

[180] SoundExchange *Ex Parte* Letter Sept. 1, 2020. SoundExchange states that ISRC, ''while used imperfectly when first introduced, has become the standard for uniquely identifying music asserts'' because they ''are used by everyone in the recorded music ecosystem.'' *Id.*

[181] DLC *Ex Parte* Letter July 24, 2020 at 2 & n.4; DLC Letter July 13, 2020 at 2 (''For at least some DMPs, doing this work would touch every part of the digital supply chain, involving interactions from multiple cross-functional teams, modifications of legacy systems, and new engineering pathways to capture, store, and report unaltered data.'').

[182] *See* DLC Letter July 13, 2020 at 4–5. The DLC later asserts that ballpark cost estimates for a larger pass through of unaltered data could ''reach as high as millions of dollars.'' DLC *Ex Parte* Letter July 24, 2020 at 4 n.10.

[183] DLC Letter July 13, 2020 at 1, 3.

[184] DLC *Ex Parte* Letter July 24, 2020 at 2.

[185] *Id.;* ARM *Ex Parte* Letter July 27, 2020 at 3–4.

[186] MLC Letter July 13, 2020 at 3–4 (''While a matching algorithm may not be fully defeated by a minor or cosmetic change to a single metadata field, the alteration of metadata makes the algorithms harder to maintain, and reduces the confidence levels, and thus the automated matching rate regardless of how sophisticated the algorithms are.''); MLC *Ex Parte* Letter July 24, 2020 at 3.

[187] MLC Letter July 13, 2020 at 4–5 (suggesting a possibility of getting as many as 50 different variations for each data field for a single sound recording from 50 different DMPs).

[188] *Id.* at 6 (''[A]ltered metadata will be a force for reducing matching efficiency and effectiveness, and will only compound the negative effects that arise from other metadata inconsistencies.'').

[189] *Id.* at 4–5; MLC *Ex Parte* Letter July 24, 2020 at 8 n. 5 (''[U]sage reporting of both unaltered and altered metadata is the only way that one could precisely quantify the effect of altered metadata reporting on matching performance.'').

amount to millions of works thrown into manual matching, which could amount to literally hundreds of human work years reestablishing matches.'' [190] In terms of relative burdens, the MLC argues that the DLC has not made a satisfactory showing of undue burden on DMPs [191] and points out the ''asymmetry'' between requiring DMPs ''to make a one-time workflow change'' and the ''ongoing and constant drain and wear on [the MLC's] systems, making its automated processes harder to maintain and less effective, and also compounding the amount of manual review required, increasing costs and decreasing efficiency.'' [192] Moreover, the MLC contends that ''[f]orcing the MLC to use the same altered metadata that the DMPs used that contributed to the system that the MLC was created to fix is inconsistent with the statutory goals.'' [193]

Regarding the contention that the MLC can use an ISRC, artist, and title keyword to match using SoundExchange's database, the MLC disagrees, asserting, among other things, that SoundExchange cannot be compelled to provide its data, that its coverage is not 100% and may omit ''possibly the majority of track entries that the MLC must match each month,'' that such cross-matching would be obstructed if the artist or title have themselves been altered, and that ''tasking the MLC with trying to clean sound recording data for public display by cross-matching and 'rolling up' DMP reporting against a third-party database is not part of the MLC's mandate.'' [194] The MLC also emphasizes that ''[t]he problems necessitating the establishment of the MLC were not centered around the matching of works embodied in established catalogs and hits,'' and thus ''the MLC sees the matching of [ ] 'edge cases' as perhaps its most critical mandate.'' [195] In response to the DLC's identification of the particular categories of information DMPs sometimes modify,[196] the MLC states that of those data fields, the MLC must have the unaltered version of the sound recording name, featured artist, ISRC, version, album title, and songwriter.[197] With respect to the DLC's statement that some DMPs cannot report unaltered data for tracks currently in their systems because they no longer have such data, the MLC requests that such DMPs be required to certify that they no longer have the data before being excused from reporting it.[198] Subsequent discussions seemingly revealed agreement among the participants that such DMPs should not be required to obtain from sound recording copyright owners, and such owners not be required to provide to DMPs, replacement ''back catalog'' data.[199]

While the Office has taken note of the thoughtful points raised by the DLC, it is ultimately persuaded by the MLC and others to update the regulatory language from the proposed rule to require reporting of four additional fields of unaltered data, subject to the requested on-ramp period. At bottom, millions of tracks are still millions of tracks, and the need to match ''edge'' cases potentially affects a large number of copyright owners and songwriters, even if only a fraction of the DMPs' aggregated libraries, and the number of altered tracks will only grow over time.[200] A core goal of the MMA is ''ensuring fair and timely payment to *all* creators'' of musical works used by DMPs.[201] As Congress has recognized, even seemingly minor inconsistencies can still pose a problem in the matching process.[202] The MLC, as bolstered by other commenters,[203] has made a reasonable showing that receiving only the modified DMP data for the fields at-issue [204] may hinder its intended matching efforts, or at least take additional time to match, thus delaying prompt and accurate royalty payments to copyright owners and songwriters.[205] The MLC has a strong incentive to match to the greatest extent reasonably possible, and so has a corresponding operational equity with respect to its professed metadata needs.[206] Additionally, while the Office agrees with the DLC that ''[t]he MLC's system is meant to be a pacesetter in the industry,'' [207] as the MLC points out, this may not necessarily support the reporting of potentially millions of tracks with certain metadata in a less-advantaged state. While the DLC also raises points worthy of consideration regarding the apparent feasibility of technological approaches to tackle cleanup edits which perhaps the

[190] MLC Letter July 13, 2020 at 5; MLC *Ex Parte* Letter July 24, 2020 at 3; *see also* MLC NPRM Comment at 25 n.10 (noting that reporting unaltered data will ''greatly improv[e] . . . the speed and accuracy of royalty processing and accounting'').

[191] MLC *Ex Parte* Letter July 24, 2020 at 4–6.

[192] MLC Letter July 13, 2020 at 5–6.

[193] *Id.* at 6.

[194] MLC *Ex Parte* Letter July 24, 2020 at 2–3.

[195] *Id.* at 3–4.

[196] DLC Letter July 13, 2020 at 2–3.

[197] MLC *Ex Parte* Letter July 24, 2020 at 9.

[198] *Id.* at 10.

[199] *See* DLC *Ex Parte* Letter July 24, 2020 at 2 (noting the meeting's ''apparent agreement between the MLC, DLC and record label representatives that there should be no obligation for DMPs to try to recreate such data from new feeds from the sound recording copyright owners''). The MLC subsequently asserts in its letter that ''there should be no carve out from the DMP efforts obligation for this metadata, and further that an efforts carve out would conflict with the MMA's unreserved efforts requirement.'' MLC *Ex Parte* Letter July 24, 2020 at 10–11. The interim rule does not adopt an explicit carve out, but the Office questions, in light of this apparent consensus or near-consensus (especially between the DMPs and sound recording copyright owners regarding their direct deals), whether efforts to reobtain such a large amount of data can be fairly characterized as ''commercially reasonable efforts.'' Having said that, if sound recording copyright owners do provide this data, DMPs would still be obligated to report it to the extent required by the interim rule.

[200] *See* MLC *Ex Parte* Letter Apr. 3, 2020 at 8 (''[D]uring an earnings call last year, Spotify's CEO stated that Spotify ingests about 40,000 tracks every day.'').

[201] *See* Conf. Rep. at 6 (emphasis added) (''Th[e present] situation must end so that all artists are paid for their creations and that so-called 'black box' revenue is not a drain on the success of the entire industry.''); H.R. Rep. No. 115–651, at 7–8; S. Rep. No. 115–339, at 8; Letter from Lindsey Graham, Chairman, Senate Committee on the Judiciary, to Karyn Temple, Register of Copyrights, U.S. Copyright Office (Nov. 1, 2019) (''All artists deserve to be fully paid for the uses of their works and the adoption of accurate metadata . . . will be key to accomplishing this.'').

[202] *See* Conf. Rep. at 6 (''Unmatched works routinely occur as a result of different spellings of artist names and song titles. Even differing punctuation in the name of a work has been enough to create unmatched works.''); H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8.

[203] *See, e.g.,* RIAA Initial NOI Comment at 3, 5–6 (explaining that passing through altered data ''will make it difficult, if not impossible, for the MLC to do machine matching without intervention from a knowledgeable human''); Jessop Initial NOI Comment at 2–3 (explaining that altered data ''make[s] matching much harder''); NMPA NPRM Comment at 7–9; Peermusic NPRM Comment at 2–3.

[204] Of the fields the DLC says DMPs sometimes modify, the MLC says it needs the unaltered version of the sound recording name, featured artist, ISRC, version, album title, and songwriter. *See* DLC Letter July 13, 2020 at 2–3; MLC *Ex Parte* Letter July 24, 2020 at 9.

[205] *See also* Conf. Rep. at 6 (observing that the status quo ''has led to significant challenges in ensuring fair and timely payment to all creators''); H.R. Rep. No. 115–651, at 7–8; S. Rep. No. 115–339, at 8; Letter from Lindsey Graham, Chairman, Senate Committee on the Judiciary, to Karyn Temple, Register of Copyrights, U.S. Copyright Office (Nov. 1, 2019) (observing one of the causes of unmatched royalties to be ''errors and omissions in metadata as the work is commercialized''); 85 FR at 22526 (''In promulgating reporting and payment rules for the section 115 license,'' one of the '''fundamental criteria''' used to '''evaluate[ ] proposed regulatory features''' is that it '''must insure prompt payment''') (quoting 79 FR 56190, 56190 (Sept. 18, 2014)).

[206] *See* 17 U.S.C. 115(d)(3)(B)(ii); 84 FR at 32283 (''[I]f the designated entity were to make unreasonable distributions of unclaimed royalties, that could be grounds for concern and may call into question whether the entity has the 'administrative and technological capabilities to perform the required functions of the [MLC].''') (quoting 17 U.S.C. 115(d)(3)(A)(iii)); Letter from Lindsey Graham, Chairman, Senate Committee on the Judiciary, to Karyn Temple, Register of Copyrights, U.S. Copyright Office (Nov. 1, 2019) (''Reducing unmatched funds is the measure by which the success of [the MMA] should be measured.'').

[207] *See* DLC Letter July 13, 2020 at 2.

operations advisory committee should discuss, its comments do not address other instances raised by commenters where '''fuzzy' search[es] or matching technologies'' are unlikely to resolve a discrepancy.[208] Finally, ARM, while advocating for the MLC to obtain sound recording metadata from a single source with respect to its public-facing database, also acknowledges the utility of it receiving unaltered metadata from DMPs as opposed to data that reflects alteration by individual DMPs.[209]

Concerning the issues raised regarding the MLC's potential use of SoundExchange's database, as discussed above and in the NPRM,[210] the Office notes the DLC's and ARM's explanations how access to a third party's authoritative sound recording data may be generally advantageous to the MLC in fulfilling its statutory objectives.[211] The Office has also noticed this issue in a parallel proceeding regarding the public musical works database, including the MLC's assertion that cleaning and/or deduping sound recording information is not part of its statutory mandate.[212] Specifically as to the DLC's suggestion that the MLC should be able to use an ISRC, artist, and title keyword to identify over 90% of recordings through automated matching by using SoundExchange's database,[213] while not opining as to the comparative feasibility of that approach, for purposes of the interim rule, the Office finds it reasonable to accept the MLC's assertion that such access alone would be an inadequate substitute for having DMPs report unaltered data. As discussed above, even a relatively small percentage gap in repertoire coverage can translate to a substantial number of tracks. Moreover, the Office cannot *compel* SoundExchange to provide its data.[214]

This approach seemingly fits within the statutory framework. The MMA obligates DMPs to facilitate the MLC's matching duties by engaging in efforts to collect data from sound recording copyright owners and passing it through to the MLC via reports of usage. A requirement to report such collected data in unaltered form is consonant with that structure, as the statute specifically contemplates musical work information being passed through from ''the metadata provided by sound recording copyright owners or other licensors of sound recordings.'' [215] While the reporting of sound recording information does not have this same limitation, its inclusion with respect to musical work information nevertheless signals that Congress contemplated sound recording information being passed through from the metadata as well; the material difference being that DMPs have an added burden with respect to sound recording information, but not musical work information, to report missing metadata from another source ''to the extent acquired.'' [216]

That being said, the interim rule also adopts the one-year transition period the DLC requests, to afford adequate time both for DMPs to reengineer their reporting systems and, if necessary, for DDEX to update its standards. As with the provision adopted concerning unique identifiers relevant to audio access, the Office concludes that the DLC's requested transition period is appropriate. The statute seemingly does not contemplate the engineering time that both the MLC and DLC have identified as necessary for the MLC and DMPs to operationalize their respective obligations.[217] To start, each entity has a core statutory duty to ''participate in proceedings before the Copyright Office,'' but neither one existed at the law's enactment. Instead, following the development of its own extensive public record, the Copyright Office concluded a proceeding to designate the MLC and DLC in July, 2019, in full conformance with the statutory timeframe, but leaving less than 18 months before the license availability date.[218] The first notification of inquiry for this (and parallel) rulemakings was issued in September 2019, at a time when the MLC and DLC were separately engaged in an assessment proceeding before the CRJs, as also contemplated by the statute.[219] The Office has conducted this rulemaking at an industrious clip, while maintaining due attention to adequately developing and analyzing the now-expansive record. Indeed, in one academic study analyzing over 16,000 proceedings, rulemakings were generally found to take, on average, 462.79 days to complete; an unrelated GAO study of rulemakings conducted by various executive branch agencies concluded that rulemakings take on average four years to complete.[220] But even with this diligence, given the statutory clock remaining before the license availability date, the Office concludes that it is appropriate to adopt reasonable transition periods with

[208] *See id.* For example, using ''fuzzy'' matching would not help with an altered release date. *See id.* at 4. Nor would it help with wholesale data replacement, such as where ''Puffy'' is changed to ''Diddy,'' *see* DLC Reply NOI Comment at 9, or ''An der schönen, blauen Donau'' is changed to ''Blue Danube Waltz,'' *see* Jessop Initial NOI Comment at 2.

[209] *See* ARM NPRM Comment at 6; ARM *Ex Parte* Letter July 27, 2020 at 1–2; A2IM & RIAA Reply NOI Comment at 3 n.1 (''In the event the Office rejects our call for the sound recording metadata to come from a single authoritative source, any metadata the DMPs are required to provide to the MLC must be provided in the exact same form in which it is received from record labels and other sound recording copyright owners (*i.e.,* in an unaltered form).'').

[210] *See* 85 FR at 22524.

[211] DLC NPRM Comment at 7–8; ARM NPRM Comment at 6–9; *see also, e.g.,* SoundExchange *Ex Parte* Letter July 24, 2020 at 1 (explaining how SoundExchange has a database of all the variations of sound recording information reported by DMPs, a separate database of authoritative sound recording data populated with information submitted by rights owners, and then a proprietary matching algorithm to join the two together); SoundExchange NPRM Comment at 2–6.

[212] *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *The Public Musical Works Database and Transparency of the Mechanical Licensing Collective,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**; MLC Letter June 15, 2020 at 3 n.3.

[213] DLC *Ex Parte* Letter July 24, 2020 at 2–3. SoundExchange subsequently clarified that ''ISRCs in SoundExchange's repertoire database cover 90 percent of the value of commercially released tracks based on SoundExchange distributions,'' and that ''a significant portion of the remaining 10 percent would likely match to repertoire data as well.'' SoundExchange *Ex Parte* Letter Sept. 1, 2020 at 2.

[214] *See also* ARM NPRM Comment at 6; ARM *Ex Parte* Letter July 27, 2020 at 1–2; A2IM & RIAA Reply NOI Comment at 3 n.1.

[215] *See* 17 U.S.C. 115(d)(4)(A)(ii)(I)(bb).

[216] *See id.* at 115(d)(4)(A)(ii)(I)(aa)–(bb) (noting that sound recording name and featured artist must always be reported). With respect to the requirement for most sound recording and musical work information to be reported ''to the extent acquired,'' at least in the strictest sense, acquired data that is altered is no longer the same as what was acquired.

[217] *See, e.g.,* MLC *Ex Parte* Letter Jan. 29, 2020 at 2; DLC Letter July 13, 2020 at 1; Spotify *Ex Parte* Letter Aug. 26, 2020 at 1.

[218] *See* 84 FR at 32274 (designating the MLC and DLC); 17 U.S.C. 115(d)(3)(B)(i) (''Not later than 270 days after the enactment date, the Register of Copyrights shall initially designate the mechanical licensing collective . . .''); 17 U.S.C. 115(e)(15) ''The term 'license availability date' means January 1 following the expiration of the 2-year period beginning on the enactment date.'').

[219] *See* 84 FR at 49966; U.S. Copyright Royalty Board, Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective, Docket No. 19–CRB–0009–AA. As noted in the comments to the NOI, the Office understands the contemporaneous assessment proceeding, to have deferred, to some extent, discussions between the MLC and DLC in this rulemaking. *See* 84 FR 65739 (Nov. 29, 2019) (extending comment period for reply comments to NOI, at commenters' requests).

[220] Anne Joseph O'Connell, *Agency Rulemaking and Political Transitions,* 105 Nw. L. Rev. 471, 513 (2011); U.S. Government Accountability Office, *Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* 5–6 (2009), *available at https://www.gao.gov/new.items/d09205.pdf* (''GAO Report''). *See also* Christopher Carrigan & Russell W. Mills, *Organizational Process, Rulemaking Pace, and the Shadow of Judicial Review,* 79 Public Admin. Rev. 721, 726–27 (2019) (for economically significant rules, finding a mean of 360.3 days from publication of proposed rule or interim final rule to publication of final rule).

respect to certain identified operational needs.[221]

During the one-year transition period, reporting altered data is permitted, subject to the same two limitations proposed in the NPRM that the DLC did not oppose: (1) DMPs are not permitted to report only modified versions of any unique identifier or release date; and (2) DMPs are not permitted to report only modified versions of any information belonging to categories that the DMP was not periodically altering prior to the license availability date. After the one-year transition period ends, DMPs additionally must report unmodified versions of any sound recording name, featured artist, version, or album title—which are the remaining categories of information that the DLC says at least some DMPs alter and that the MLC says it needs in unaltered form, with one exception. The Office declines the MLC's requested inclusion of the songwriter field at this time because it is a musical work field rather than a sound recording field, and according to the DLC, when it is provided by sound recording copyright owners, it is usually duplicative of the featured artist field, which will already have to be reported unaltered.[222]

As the DLC requests, the interim rule includes an exception for where DMPs cannot report unaltered data for tracks currently in their systems because they no longer have such data.[223] Obviously DMPs cannot report what they do not have, but the Office agrees with the MLC that the ability to use the exception should be contingent upon an appropriate certification. The interim rule, therefore, requires the DMP to certify to the best of its knowledge that: (1) The information at issue belongs to a category (each of which must be identified) that the DMP was periodically altering prior to the effective date of the interim rule; and (2) despite engaging in good-faith, commercially reasonable efforts, the DMP has not located the unaltered version of the information in its records. Since DMPs that no longer have this information may not know with granularity which data is in fact altered, the interim rule also makes clear that the certification need not identify specific sound recordings or musical works, and that a single certification may be used to encompass all unaltered information satisfying the conditions that must be certified to. For any DMP that to the best of its knowledge no longer has the unaltered data in its possession, this should not be an onerous burden.

The Office would welcome updates from the MLC's operations advisory committee, or the MLC or DLC separately, on any emerging or unforeseen issues that may arise during the one-year transition period.

viii. Practicability

In addition to the three tiers of sound recording and musical work information described in the NPRM, the Office further proposed that certain information, primarily that covered by the second and third tiers, must be reported only to the extent ''practicable,'' a term defined in the proposed rule.[224] The DLC had asserted that it would be burdensome from an operational and engineering standpoint for DMPs to report additional categories of data not currently reported, and that DMPs should not be required to do so unless it would actually improve the MLC's matching ability.[225] Based on the record, the NPRM observed that all of the proposed data categories appeared to possess some level of utility, despite disagreement as to the particular degree of usefulness of each, and that different data points may be of varying degrees of helpfulness depending on which other data points for a work may or may not be available.[226] Consequently, the proposed rule defined ''practicable'' in a specific way.[227] First, the proposed definition would have always required reporting of the expressly enumerated statutory categories (*i.e.,* sound recording copyright owner, producer, ISRC, songwriter, publisher, ownership share, and ISWC, to the extent appropriately acquired, regardless of any associated DMP burden). Second, it would have required reporting of any other applicable categories of information (*e.g.,* catalog number, version, release date, ISNI, etc.) under the same three scenarios that were proposed with respect to unaltered data: (1) Where the MLC has adopted a nationally or internationally recognized standard, such as DDEX, that is being used by the particular DMP, and the information belongs to a category of information required to be reported under that standard; (2) where the information belongs to a category of information that is reported by the particular DMP pursuant to any voluntary license or individual download license; or (3) where the information belongs to a category of information that was periodically reported by the particular DMP to its licensing administrator or to copyright owners directly prior to the license availability date. The NPRM explained that, as with the proposed rules about unaltered data, the Office's proposed compromise sought to appropriately balance the need for the MLC to receive detailed reporting with the burden that more detailed reporting may place on certain DMPs.[228]

In response to the NPRM, the MLC argues against the proposed rule, questioning how it can be impracticable for a DMP to report information it has in fact acquired, and generally contending that the DLC has not sufficiently supported its assertions of DMP operational burdens.[229] The DLC's comments do not propose any changes to this aspect of the proposed rule.[230] The Office gave the DLC an opportunity to elaborate on this matter and address the MLC's contentions, asking the DLC to ''[l]ist each data field proposed in § 210.27(e)(1) that the DLC contends would be overly burdensome for certain DLC members to report if the Office does not limit reporting to the extent practicable'' and, for any such field, to ''[d]escribe the estimated burden, including time, expense, and nature of obstacle, that individual DLC members anticipate they will incur if required to report.'' [231] The DLC responded by stating that ''assuming (against experience) that DMPs actually acquired *all* of the metadata types listed in subsections (e)(1)(i)(E) and (e)(1)(ii), the answer is that it would be impracticable (and for some data fields, impossible) to report subsection (e)(1)(ii)'s musical work information to the MLC.'' [232] The

[221] The Office's reasoning is further supported by the delayed statutory timeframe before the MLC may consider distributing unclaimed, unmatched funds. Because the MLC will have at least three years to engage in matching activities with respect to a particular work, this additional time may be used by the MLC to make up for any inefficiencies felt during a relevant transition period, rather than have a rule adopted that limited consideration to only changes that would be operationally feasible by the license availability date. 17 U.S.C. 115(d)(3)(H)(i), (J)(i)(I); 85 FR 33735, 33738 (June 2, 2020).

[222] *See* DLC Letter July 13, 2020 at 7–8. The MLC has stated in the Office's concurrent rulemaking about the musical works database that ''[t]he musical works data will be sourced from copyright owners.'' MLC *Ex Parte* Letter Aug. 21, 2020 at 2.

[223] *See* DLC *Ex Parte* Letter July 24, 2020 at 2; MLC *Ex Parte* Letter July 24, 2020 at 10 (proposing regulatory language); *see also* DLC *Ex Parte* Letter July 24, 2020 at 2 n.3 (''DMPs should [not] be held to a 'burden of proof' about the absence of data they were never required to maintain.'').

[224] 85 FR at 22531–32, 22541–42.

[225] *Id.* at 22531.

[226] *Id.*

[227] *Id.* at 22531–32.

[228] *Id.* at 22532.

[229] *See* MLC NPRM Comment at 4, 16–17, 38; *see also* NMPA NPRM Comment at 2.

[230] DLC NPRM Comment Add. at A–17–18.

[231] U.S. Copyright Office Letter June 30, 2020 at 3–4.

[232] DLC Letter July 13, 2020 at 8–9. For reference, paragraphs (e)(1)(i)(E) and (e)(1)(ii) cover all sound

DLC explains that ''[t]he fundamental problem arises from the fact that for subsection (e)(1)(ii)'s data types, there are no mandatory DDEX data fields, and in some instances, no data fields at all.'' [233]

In light of these comments, the Office concludes that this reporting limitation should be revised, and so the interim rule replaces this concept with a one-year transition period. The DLC states that it is only impracticable to provide musical work information (not sound recording information), because of a current lack of DDEX data fields. As discussed above, however, the Office is persuaded that it should not refer to DDEX's requirements in promulgating these rules, and that parties may need to pursue changes to DDEX's standards to accommodate the Office's regulations if they wish to use that standard.[234] Additionally, some of the musical work fields that the DLC says are impracticable to report because of DDEX are statutorily required, which means that not reporting them was never a possibility, including under the originally proposed practicability limitation. Moreover, the MLC states that ''[a]ll of the metadata fields proposed in § 210.27(e)(1) will be used as part of the MLC's matching efforts.'' [235]

The Office is mindful that it will take time both for DMPs to reengineer their reporting systems and for DDEX to update its standards. The interim rule establishes a one-year transition period (the length of time the DLC states is necessary for DMPs to make significant reporting changes) [236] during which DMPs may report largely in accord with what was proposed in the NPRM, though for clarity, the regulatory language has been amended to address this condition in terms of the transition period, rather than the previously proposed defined term ''practicable.'' The main substantive change is that, following the reasoning above, the Office has eliminated the scenario where the MLC has adopted a nationally or internationally recognized standard, such as DDEX, that is being used by the particular DMP, and the information belongs to a category of information required to be reported under that standard.[237]

ix. Server Fixation Date and Termination

Another disputed issue in this proceeding has been the MLC's proposal to require DMPs to report the date on which each sound recording is first reproduced by the DMP on its server. As discussed in the NPRM, the MLC said it needs this date to operationalize its interpretation of the derivative works exception to the Copyright Act's termination provisions in sections 203 and 304(c).[238] Under the MLC's legal interpretation, the exception applies to the section 115 compulsory license, and therefore, if the compulsory license ''was issued before the termination date, the pre-termination owner is paid. Otherwise, the post-termination owner is paid.'' [239] The MLC argued that, in contrast to the prior regime where ''the license date for each particular musical work was considered to be the date of the NOI [240] for that work,'' under ''the new blanket license, there is no license date for each individual work,'' [241] and, therefore, the MLC sought the so-called server fixation date, which it contended is ''the most accurate date for the beginning of the license for that work.'' [242] The DLC said that not all DMPs store this information and argued that it should not need to be reported.[243] No other commenter directly spoke to this issue prior to the issuance of the NPRM.

Based on the record to that point, the Office suggested that the MLC's interpretation ''seems at least colorable,'' noting the lack of comments disagreeing with what the MLC had characterized as industry custom and understanding.[244] The Office also said that, to the extent the MLC's approach is not invalidated or superseded by precedent, it seemed reasonable for the MLC to want to know the applicable first use date, upon which to base a license date, so it could essentially have a default practice to follow in the absence of a live controversy between parties or a challenge to the MLC's approach.[245]

Without opining on the merits of the MLC's interpretation, the Office proposed a rule concerning what related information DMPs should maintain or provide.[246] The NPRM distinguished among three categories of works.[247] First, the rule did not propose regulatory language to govern musical works licensed by a DMP prior to the license availability date because it did not seem necessary to disrupt whatever the status quo may be in such cases. Second, for musical works being used by a DMP prior to the effective date of that DMP's blanket license (which for any currently operating DMP should ostensibly be the license availability date) either pursuant to a NOI filed with the Office or without a license, the Office observed that this blanket license effective date may be the relevant license date, and proposed requiring each DMP to take an archival snapshot of its database as it exists immediately prior to that date to establish a record of the DMP's repertoire at that point in time. Last, for musical works that subsequently become licensed pursuant to a blanket license after the effective date of a given DMP's blanket license, the rule proposed requiring each DMP to keep and retain in its records, but not provide in monthly reports of usage, at least one of three dates for each sound recording embodying such a musical work: (1) Server fixation date; (2) date of the grant first authorizing the DMP's use of the sound recording; and (3) date on which the DMP first obtained the sound recording.

In response to the NPRM, in addition to further comments from the MLC and DLC, the Office received comments from a publisher, generally supporting the MLC's position, and a number of organizations representing songwriter interests that raised notes of caution regarding that position.[248] Following an *ex parte* meeting with commenters to further discuss the matter, the Office received additional written submissions

recording and musical work data fields except for sound recording name, featured artist, playing time, and DMP-assigned unique identifier.

[233] *Id.* at 9.

[234] The Office, therefore, disagrees with the DLC's proposed approach that ''the MLC should be left to progress these issues with DDEX in the absence of regulation or any other insertion of the Office into those ongoing discussions.'' *See* DLC Letter July 13, 2020 at 9. Especially considering that the DLC in other contexts argues that the Office should not ''delegate[ ] any future determination about the wisdom of adopting [reporting requirements] to a standards-setting body.'' *See* DLC NPRM Comment at 5, 10.

[235] MLC Letter July 13, 2020 at 7.

[236] DLC NPRM Comment at 6, 11; DLC Letter July 13, 2020 at 5.

[237] The NPRM had noted that the Office was contemplating a potential fourth scenario where reporting would have been considered practicable, *see* 85 FR at 22532, but since the Office is only retaining this limitation on reporting temporarily, the Office does not find it prudent to include the additional scenario. *See* DLC NPRM Comment at 6 (arguing that the scenario is ''not workable'' because it ''embeds too many questions, to which the answers are too subjective, for useful and operable regulation to take hold'').

[238] *See* 85 FR at 22532–33.

[239] MLC *Ex Parte* Letter Feb. 26, 2020 at 6.

[240] In this discussion, ''NOI'' refers to notices of intention to obtain a compulsory license under section 115. *See* 37 CFR 201.18.

[241] MLC *Ex Parte* Letter Apr. 3, 2020 at 6.

[242] MLC *Ex Parte* Letter Feb. 26, 2020 at 7.

[243] 85 FR at 22532.

[244] *Id.*

[245] *Id.* at 22532–33.

[246] *See id.* at 22533, 22546.

[247] *Id.*

[248] *See* MLC NPRM Comment at 26–32, App. at xiv–xv, xxviii–xxix; DLC NPRM Comment at 15–16, Add. at A–29–30; Peermusic NPRM Comment at 5–6; SONA & MAC NPRM Comment at 8–12; Recording Academy NPRM Comment at 3.

on this issue.[249] The record has benefited from this expansion of perspectives. Because the voting publisher members of the MLC's board must be publishers ''to which songwriters have assigned [certain] exclusive rights'' and the voting songwriter members of the MLC's board must be songwriters ''who have retained and exercise [certain] exclusive rights,'' the MLC's views, however well-meaning and informed, are not presumptively representative of the interests of those who may exercise termination rights in the future.[250] In sum, and as discussed below, commenters representing songwriter interests are generally deeply concerned with protecting termination rights and ensuring that those rights are not adversely impacted by anything in this proceeding or any action taken by the MLC; the MLC seeks reporting of information it believes it needs to operate effectively; and the DLC seeks to ensure that any requirements placed upon DMPs are reasonable. Additionally, there seems to be at least some level of agreement that knowing the date of first use of the particular sound recording by the particular DMP may be of some utility, and various additional dates other than server fixation date have been suggested to represent that date, such as the recording's street date (the date on which the sound recording was first released on the DMP's service).

Having considered these comments, the Office is adjusting the proposed regulatory language as discussed below. The Office also offers some clarifications concerning the underlying termination issues that have been raised and the MLC's related administrative functions. Although the NPRM suggested that the MLC's interpretation might be colorable, the Office's intent was neither to endorse nor reject the MLC's position; the Office made clear that it ''does not foreclose the possibility of other interpretations, but also does not find it prudent to itself elaborate upon or offer an interpretation of the scope of the derivative works exception in this particular rulemaking proceeding.'' [251] Indeed, a position contrary to the MLC's may well be valid, as the issue does not appear definitively tested by the courts. For example, Nimmer's treatise expresses the opinion that ''a compulsory license of rights in a musical work is not subject to termination'' because ''it is executed by operation of law, not by the consent of the author or his successors,'' [252] which Nimmer says means that where a songwriter (or heir) terminates an assignment to a publisher, ''at that point the compulsory license royalties would be payable solely to [the terminating songwriter (or heir)] as copyright owner[ ], rather than to [the terminated publisher] whose copyright ownership at that point would cease.'' [253]

The Office again stresses that in this proceeding it is not making any substantive judgment about the proper interpretation of the Copyright Act's termination provisions, the derivative works exception, or their application to section 115. Nor is the Office opining as to how the derivative works exception, if applicable, may operate in this particular context, including with respect to what information may or may not be appropriate to reference in determining who is entitled to royalty payments. To this end, as requested by several commenters representing songwriter interests and agreed to by the MLC, the interim rule includes express limiting language to this effect.[254]

In light of the additional comments, the Office is not convinced of the need for the MLC to implement an automatically administered process for handling this aspect of termination matters. Rather, as others suggest, it seems reasonable for the MLC to act in accordance with letters of direction received from the relevant parties, or else hold applicable royalties pending direction or resolution of any dispute by the parties.[255] The Office understands and appreciates the MLC's general need to operationalize its various functions and desire to have a default method of administration for terminated works in the normal course. The comments, however, suggest that this might stray the MLC from its acknowledged province into establishing what would essentially be a new industry standard based on an approach that others argue is legally erroneous and harmful to songwriters.[256] The information that may be relevant in administering termination rights may not be the same as what the MLC may be able to most readily obtain and operationalize.[257] While the MLC does intend to follow letters of direction, it states that they ''typically do not have [the necessary] level of detail, which underscores the importance of having a data point to assist with identifying whether first use by a DMP falls before or after statutory termination.'' [258] MAC, however, states that ''Letters of Direction universally supply an operative date.'' [259] In cases where the MLC lacks sufficient ownership and payment information resulting from termination of transfers, a cautious approach may be to simply continue holding the relevant royalties

[249] *See* U.S. Copyright Office Letter June 10, 2020; DLC *Ex Parte* Letter June 26, 2020; MLC *Ex Parte* Letter June 26, 2020; MAC *Ex Parte* Letter June 26, 2020; NSAI *Ex Parte* Letter June 26, 2020; Peermusic *Ex Parte* Letter June 26, 2020; Recording Academy *Ex Parte* Letter June 26, 2020; SGA *Ex Parte* Letter June 26, 2020; SONA *Ex Parte* Letter June 26, 2020.

[250] *See* 17 U.S.C. 115(d)(3)(D)(i)(I)–(II).

[251] *See* 85 FR 22532 & n.210.

[252] Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02 n.121 (2020); *see Mills Music, Inc.* v. *Snyder,* 469 U.S. 153, 168 n.36 (1985) (referring to the section 115 license as ''self-executing''); *see also* Paul Goldstein, Goldstein on Copyright sec. 5.4.1.1.a. (3d ed. 2020) (''The requirement that, to be terminable, a grant must have been 'executed' implies that compulsory licenses, such as section 115's compulsory license for making and distributing phonorecords of nondramatic musical works, are not subject to termination.'').

[253] Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02 n.121 (2020); *see Mills Music, Inc.* v. *Snyder,* 469 U.S. 153, 185 n.12 (1985) (White, J., dissenting) (stating that the statutory royalty for the section 115 license ''is payable to the current owner of the copyright''); *see also* Recording Academy *Ex Parte* Letter at 2 (June 26, 2020) (''[T]he Office's rulemaking should not imply or assume that a terminated party necessarily continues to benefit from the blanket license after termination.'').

[254] *See* SONA & MAC NPRM Comment at 12; MAC *Ex Parte* Letter June 26, 2020 at 2; Recording Academy *Ex Parte* Letter June 26, 2020 at 2–3; SGA *Ex Parte* Letter June 26, 2020 at 1–2; SONA *Ex Parte* Letter June 26, 2020 at 3–4; NSAI *Ex Parte* Letter June 26, 2020 at 1; MLC *Ex Parte* Letter June 26, 2020 at 4, 5; Peermusic *Ex Parte* Letter June 26, 2020 at 1–2.

[255] *See, e.g.,* SONA & MAC NPRM Comment at 11–12 (''The allocation of royalty income for a song as between the terminated grantee and the owner of the termination rights is a legal question and is typically communicated by the parties to a licensing administrator via a letter of direction. . . . To the extent a legal dispute were to arise . . . it would be best resolved by a court based on the facts of that particular dispute.''); MAC *Ex Parte* Letter June 26, 2020 at 3 (''MAC also questioned the operational reasoning for MLC gathering the server fixation data as MLC will ultimately rely on the parties to resolve disputes. After all, Letters of Direction universally supply an operative date.''); SONA *Ex Parte* Letter June 26, 2020 at 3 (''[T]ermination rights are typically administered according to letters of direction submitted by the interested parties . . .''); Recording Academy *Ex Parte* Letter June 26, 2020 at 2 (''[T]hese questions could be negotiated or litigated by future parties in a dispute.'').

[256] *See, e.g.,* SONA & MAC NPRM Comment at 8–11 (expressing ''serious reservations about [the MLC's] approach, which would seemingly redefine and could adversely impact songwriters' termination rights''); Recording Academy *Ex Parte* Letter June 26, 2020 at 2 (''MLC was erroneously using the server fixation date as a proxy for a grant of a license.''); SONA *Ex Parte* Letter June 26, 2020 at 2; MAC *Ex Parte* Letter June 26, 2020 at 2.

[257] *See* MLC NPRM Comment at 30–31 (arguing against aspects of the proposed rule by asserting, for example, that certain information ''would be impossible for the DMPs or the MLC to ascertain,'' ''the Proposed Regulation does not require [third-party] vendors to provide the NOIs or their dates,'' and ''[t]he MLC also may not have the date of a voluntary license''). *Cf. id.* at 30 (''An arbitrary decision by a DMP as to which date to provide cannot be the basis for determining whether the pre- or post-termination copyright owner is paid.'')

[258] MLC *Ex Parte* Letter June 26, 2020 at 4.

[259] MAC *Ex Parte* Letter June 26, 2020 at 3.

until it receives a letter of direction or other submissions from the relevant musical work copyright owner(s) that have sufficient detail to enable the MLC to carry out the parties' wishes.[260]

Moreover, if the MLC establishes a default process that applied the derivative works exception, the appropriate dividing line for determining who is entitled to relevant royalty payments remains unclear (and beyond the scope of this proceeding). SONA & MAC provide the following example to illustrate why ''the server-fixation approach could cause economic harm to songwriters'':

> [I]f a sound recording derivative is first reproduced on a server by DMP X in 2015 under a voluntary license granted by Publisher Y, and Songwriter Z terminates the grant to Publisher Y and recaptures her rights in 2020 before the blanket license goes into effect, under the server-fixation rule articulated by the MLC, the 'license date' for that derivative would be 2015. Accordingly, Publisher Y, rather than Songwriter Z, would continue to receive royalties for DMP X's exploitation of the musical work as embodied in that sound recording, even if the voluntary license came to an end and the DMP X began operating under the new blanket license as of January 1, 2021.[261]

Other suggested dates, such as street date, may raise similar questions. The same concern could arise after the license availability date as well—for example where a DMP in 2022 has both a blanket license and a voluntary license, the DMP first uses a work in 2024 pursuant to the voluntary license, a relevant termination occurs in 2028, the voluntary license expires in 2030, and afterward the DMP continues using the work but, for the first time, pursuant to its blanket license—because ''[w]here a voluntary license or individual download license applies, the license authority provided under the blanket license shall exclude any musical works (or shares thereof) subject to the voluntary license or individual download license.'' [262] In that instance, using SONA's nomenclature and assuming the derivative work exception applies, the work terminated in 2028 should see royalties payable to Songwriter Z starting in 2030 (once the pre-termination grant ends by its own terms), but a reliance upon the server fixation date would result in continued payment to Publisher Y. And following from the interpretation advanced regarding section 115 and termination rights, it seems that there may be other potentially relevant dates not raised by the commenters, for example: The date that the particular musical work becomes covered by the DMP's blanket license, *i.e.,* the date that it becomes ''available for compulsory licensing'' and not subject to a voluntary license or individual download license held by that DMP (*e.g.,* 2030 and post-termination in the previous example, as opposed to 2024 and pre-termination if a street, server, or other first-use date is applied).[263] Of course this would have to be assessed in conjunction with the date of creation of the relevant sound recording derivative.[264]

Additionally, while the MLC does not see its function as enforcing termination rights or otherwise resolving disputes over terminations or copyright ownership, stating repeatedly that it takes no position on what the law should be and that it is not seeking to change the law,[265] its position on the proposed rule may unintentionally be in tension with its stated goals.[266] For example, the MLC's view assumes the derivative works exception applies, would reject the alternative dates proposed by the NPRM because they ''will not resolve the issue of whether the pre- or post-termination rights owner is entitled to payment,'' and proposes receiving certain dates for works licensed before the license availability date despite its statement that customary practice is to use NOI dates instead.[267] Similarly, MLC board member Peermusic characterizes the MLC's approach as a '' 'fix' . . . to avoid confusion in the marketplace (and to head off disputes among copyright-owning clients of the MLC)'' by ''designat[ing]'' an ''appropriate substitute for the prior individual NOI license date.'' [268]

Based on the foregoing, it does not seem prudent to incentivize the MLC to make substantive decisions about an unsettled area of the law on a default basis. But the record also suggests that the transition to the blanket license represents a significant change to the status quo that may eliminate certain dates, such as NOI dates, that may have historically been used in post-termination activities, such as the renegotiation and execution of new agreements between the relevant parties to continue their relationship on new terms.[269] Perhaps as a result, after discussion, some commenters representing songwriter interests supported the preservation of various dates ''that may be pertinent and necessary to the determination of future legal issues.'' [270]

Accordingly, the interim rule maintains the proposed requirement for DMPs to retain certain information, adjusted as discussed below. The purpose of this rule is to aid retention of certain information that commenters

[260] *Compare* MLC *Ex Parte* Letter Aug. 21, 2020 at 2 (indicating that ownership information pertaining to musical works in the public database ''will be sourced from copyright owners'').

[261] SONA & MAC NPRM Comment at 11; *see id.* at 8 (noting that termination rights ''are tied to *grants* of copyright interests—not when or where a work is reproduced''); SONA *Ex Parte* Letter June 26, 2020 at 3 (''SONA representatives underscored the distinction between utilization of a work and a license grant, which are not the same and should not be conflated . . .'').

[262] 17 U.S.C. 115(d)(1)(C)(i); *see also id.* at 115(d)(1)(B)(i).

[263] *See id.* at 115(d)(1)(B)(i), (C). The MLC states that ''[u]nder the new blanket license, there will no longer be a specific license date for each individual work; the license date for all musical works will be the date the DMP first obtained the blanket license, and that date could potentially remain in effect indefinitely for millions of musical works, even as new ones are created and subsequently become subject to the blanket license.'' MLC NPRM Comment at 27; *see also* Peermusic NPRM Comment at 5 (''[T]he NOL date will cover all works then subject to the compulsory license as well as all works created later, as long as the NOL remains in effect.''). But that is a significant and seemingly erroneous assumption with respect to works created post-blanket license or licensed voluntarily. *See* 17 U.S.C. 115(d)(1)(B)(i), (C). *Cf.* U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 2310.3(C)(3) (3d ed. 2017) (''[A] transfer that predates the existence of the copyrighted work cannot be effective (and therefore cannot be 'executed') until the work of authorship (and the copyright) come into existence.'') (quotation omitted); *Waite* v. *UMG Recordings, Inc.,* No. 19–cv–1091(LAK), 2020 WL 4586893, at *6 (S.D.N.Y. Aug. 10, 2020) (''If a work does not exist when the parties enter into a transfer or assignment agreement, there is no copyright that an artist (or third party company) can transfer.'').

[264] *See Mills Music, Inc.* v. *Snyder,* 469 U.S. 153, 173 (1985) (''The critical point in determining whether the right to continue utilizing a derivative work survives the termination of a transfer of a copyright is whether it was 'prepared' before the termination. Pretermination derivative works—those prepared under the authority of the terminated grant—may continue to be utilized under the terms of the terminated grant. Derivative works prepared after the termination of the grant are not extended this exemption from the termination provisions.'').

[265] MLC *Ex Parte* Letter June 26, 2020 at 2; *see also* Peermusic *Ex Parte* Letter June 26, 2020 at 1; NSAI *Ex Parte* Letter June 26, 2020 at 1.

[266] *See* Recording Academy *Ex Parte* Letter June 26, 2020 at 1–2 (''Despite stating repeatedly that the MLC has no interest in altering, changing, or diminishing the termination rights of songwriters, it was clearly conveyed that one of the primary reasons for seeking this data is to determine the appropriate payee for the use of a musical work that is the subject of a termination. The Academy's view is that using the data in this way *would* diminish termination rights.'').

[267] *See* MLC NPRM Comment at 29; *see id.* at 30 (''The date provided will be the dividing line that will determine which copyright owner—the pre- or post-termination owner—will be paid.'').

[268] Peermusic NPRM Comment at 5–6; *see id.* at 6 (''[T]he alternatives proposed do not provide for the certainty that is required in establishing dates of grants under Sections 203 and 304.'').

[269] *See* Peermusic *Ex Parte* Letter June 26, 2020 at 1 (''[T]he MMA's elimination of individual NOIs has in fact already upset the status quo.'').

[270] *See* SGA *Ex Parte* Letter June 26, 2020 at 2; *see also* SONA *Ex Parte* Letter June 26, 2020 at 3, 4; NSAI *Ex Parte* Letter June 26, 2020 at 1.

have signaled may be useful in facilitating post-termination activities, such as via inclusion in letters of direction to the MLC, that may not otherwise be available when the time comes if not kept by the DMPs.[271] To be clear, the Office is not adopting or endorsing a specific ''proxy'' for a grant date.[272]

After considering relevant comments, including the MLC's arguments to the contrary, the interim rule maintains the NPRM's proposed approach of tiering the requirements according to when, out of three time periods, the musical work was licensed by a DMP.[273] Maintaining the status quo, the interim rule does not include regulatory language to govern musical works licensed by a DMP prior to the license availability date. If previous industry consensus was to use NOI dates (a factual matter the Office passes no judgment on), then the Office sees no reason why that should necessarily change.[274] As it has not been suggested that the relevant parties' access to historic NOI (or voluntary license) dates is any different than pre-MMA, it does not seem appropriate to require DMPs to retain any additional information for such parties' potential future use in directing the MLC with respect to this category of works.

Next, to provide a data point with respect to works that first become licensed as of a DMP's respective blanket license effective date, the interim rule largely adopts the proposed database snapshot requirement. The DLC does not object to this general requirement, but requests two modifications to the proposed language to be practical for DMPs to implement: The required data fields for the snapshot should be limited to those the MLC reasonably requires and that the DMP has reasonably available (which the DLC says are sound recording name, featured artist, playing time, and DMP-assigned unique identifier); and instead of the snapshot needing to be of the database as it exists immediately prior to the effective date of the DMP's blanket license, it should be as it exists at a time reasonably approximate to that date.[275] The MLC opposes the DLC's proposal to limit the data fields of the snapshot.[276] The Office finds the DLC's requested modifications to be reasonable, and adopts them with two slight changes. First, although requiring all of the data fields required for usage reporting and matching, as the MLC requests, seems unnecessary for the markedly different purpose of the snapshot, the interim rule adds ISRC (to the extent acquired by the DMP) so that, at least for most tracks, there is a second unique identifier in case the DMP-assigned unique identifier fails for some reason.[277] Second, while the Office finds that, based on the technological issues discussed in the DLC's comments, it is reasonable to permit the snapshot to be of a time reasonably approximate to the attachment of the DMP's blanket license, the interim rule requires DMPs to use commercially reasonable efforts to make the snapshot as accurate and complete as reasonably possible in representing the service's repertoire as of immediately prior to the effective date of the DMP's blanket license.

As for the last category—musical works that subsequently become licensed pursuant to a blanket license after the effective date of a given DMP's blanket license—the comments reflect that the proposed rule should be updated. As discussed below, the interim rule requires each DMP to retain, to the extent reasonably available, both the server fixation date and street date for each sound recording embodying a musical work that is part of this category. If a DMP only has one of these dates, it should retain that one. If a DMP has neither, then the DMP should retain the date that, in the assessment of the DMP, provides a reasonable estimate of the date the sound recording was first distributed on its service within the U.S. For each retained date, the DMP should also identify which type of date it is (*i.e.,* server date, street date, or estimated first distribution date), so any party seeking to use such information will know which date is being relied upon.[278]

This approach strives to accommodate the competing equities raised over this issue. The comments indicate some level of agreement that knowing the date of first use of the particular sound recording by the particular DMP may be of some utility—regardless of whether such date may or may not be the ''correct'' item to look at under the Copyright Act.[279] And among those commenters suggesting particular dates, there seems to be a general consensus that the server and street dates may be appropriate representations or approximations of first use.[280] Other proposed dates have not been included generally because they do not seem to be dates that DMPs would have in their possession, there lacks consensus that such dates would be useful, and/or confidentiality concerns have been raised by the RIAA with respect to private agreements between individual record companies and individual DMPs. Although confidentiality concerns were also broached by the RIAA over the server date and estimated first distribution date, the Office understands those concerns to be less significant than with other data and disputed by the DLC,[281] and the Office finds those

[271] *See, e.g.,* SGA *Ex Parte* Letter June 26, 2020 at 2; Recording Academy *Ex Parte* Letter June 26, 2020 at 2; SONA *Ex Parte* Letter June 26, 2020 at 4.

[272] SONA & MAC NPRM Comment at 10 (''There is no suggestion that the correct payee can or should be determined based upon a 'proxy' server fixation date or other than as provided in the Copyright Act.''); *id.* at 8, 10–11; SONA *Ex Parte* Letter June 26, 2020 at 2 (''[SONA] would be apprehensive of any rule treating a piece of data as a 'proxy' for a grant under copyright law.''); Recording Academy *Ex Parte* Letter June 26, 2020 at 3 (''The data . . . should not be interpreted to represent, or serve as a proxy for, a grant of a license.''); *id.* at 2.

[273] *See* MLC NPRM Comment at 30–31.

[274] *See id.*

[275] DLC NPRM Comment at 15–16 (explaining that ''the number of data fields and volume of data contained in the snapshot or archive is likely to be enormous—unduly burdensome and impractical both for the DMPs to produce and for the MLC to use,'' and that ''the process of creating the snapshot or archive will . . . involve so much data that it cannot be completed in a single day'' which means that ''works that are added to the service while the snapshotting or archiving process is underway may not ultimately be captured in the archive''); *id.* at 16 & n.66, Add. at A–30; DLC *Ex Parte* Letter June 26, 2020 at 4. While the DLC requests that the snapshot be at a time reasonably approximate to the ''license availability date,'' the Office believes the DLC meant for that to mean the effective date of the DMP's blanket license. This requirement will also apply to any new DMP that first obtains a blanket license at a time subsequent to the license availability date.

[276] *See* MLC *Ex Parte* Letter June 26, 2020 at 6–7.

[277] *See id.* (asserting that other fields like ISRC and version ''can be critical for aligning the records where the unique identifier fails'').

[278] *See* MLC NPRM Comment at 32, App. at xiv–xv (proposing DMPs identify which type of date it is).

[279] *See id.* at 32, App. at xiv; MLC *Ex Parte* Letter June 26, 2020 at 2 (''[T]he call confirmed consensus'' that DMPs should ''include a data field identifying a date that reflects the first use of each sound recording by the service.''); *id.* at 2–4, 6; SONA *Ex Parte* Letter June 26, 2020 at 4 (stating ''the initial utilization date can be critical''); *id.* at 3–4; SGA *Ex Parte* Letter June 26, 2020 at 2; NSAI *Ex Parte* Letter June 26, 2020 at 1.

[280] *See* MLC NPRM Comment at 32, App. at xiv; MLC *Ex Parte* Letter June 26, 2020 at 2–4, 6; SONA *Ex Parte* Letter June 26, 2020 at 4 (''[I]t seems that both server fixation date and the 'street date' specific to a particular DMP may be useful to establish initial utilization of a specific sound recording by a particular service.''); *id.* at 3; SGA *Ex Parte* Letter June 26, 2020 at 2; NSAI *Ex Parte* Letter June 26, 2020 at 1.

[281] *See* RIAA *Ex Parte* Letter Aug. 24, 2020 at 1–2. Potentially contradictory, despite concerns with the estimated first distribution date, the RIAA has no concerns with the date that a track is first streamed. *See id.* The DLC disagrees that the estimated first distribution date is confidential data because it is ''generated by the DMPs themselves, and therefore could not be considered proprietary to the record labels.'' DLC *Ex Parte* Letter Aug. 27, 2020 at 2. It also states that dates generated by DMPs themselves should not be confidential. The Office is considering confidentiality issues

concerns as articulated to be outweighed by the need to provide DMPs with a reasonable degree of flexibility in carrying out the obligations this aspect of the interim rule places upon them.

The dates incorporated into the interim rule represent three of the four dates for which the DLC said would be feasible for DMPs to retain at least one.[282] Although the Office declines to include the fourth date, ingestion date, because there was no consensus as to its utility,[283] the interim rule does include the DLC's proposed ''catch-all'' estimated first distribution date, such that all DMPs should be able to comply with the rule even if not in possession of a server or street date for a given recording.[284] For this same reason, and also because the retention requirement is limited to where the server and street dates are reasonably available to the DMP, the requirement to potentially have to retain both of these dates (where available), instead of merely a single date of the DMP's choosing, is not anticipated to be overly burdensome.[285]

The Office again declines the MLC's suggestion that DMPs should have to provide this information in their monthly reports of usage, instead encouraging the MLC to view the administration of terminations of transfers as more akin to one of a number of changes in musical work ownership or licensing administration scenarios the MLC is readying itself to administer apart from the DMPs' monthly usage reporting. Although the MLC warns of processing inefficiencies and potential delays if it does not receive the pertinent information in monthly reporting, it is unclear why this would be the case.[286] As discussed above, the Office presumes the MLC will be operating in accordance with letters of direction (or other instructions or orders) that provide the requisite information needed for the MLC to properly distribute the relevant royalties to the correct party. In cases where the MLC is directed to use the DMP-retained information, it would seem that the MLC, as a one-time matter, could pull the information for each DMP for that work and apply it appropriately. The DLC makes a similar observation and further explains that monthly reporting is unnecessary because ''termination is relevant to only a subset of musical works . . . [a]nd only a (likely small) subset of grants are terminated in any event,'' and that ''as to each work, termination is an event that happens once every few *decades*.'' [287] The MLC does not address these points. While the MLC seems to characterize its need for this data as a usage matching issue, it seems more appropriately understood as a change in ownership issue, and the record does not address why a change in ownership prompted by a termination of transfer would be materially more difficult to operationalize than any other change in ownership the MLC will have to handle in the ordinary course, including by following the procedures recommended by its dispute resolution committee.

Nevertheless, the Office recognizes that it may take more time for the MLC to request access to the relevant information from the DMPs, rather than having it on hand upon receiving appropriate direction about a termination. While not requiring monthly reporting, the interim rule requires DMPs to report the relevant information to the MLC annually and grant the MLC reasonable access to the records of such information if needed by the MLC prior to it being reported. The DLC previously requested that if the Office requires affirmative reporting of this information that it be on a quarterly basis and subject to a one-year transition period, so the Office believes this to be a reasonable annual requirement.[288] The Office also expects this adjustment to alleviate some of the MLC's concerns with the proposed rule's retention provision discussed above.[289] This reporting may, but need not, be connected to the DMP's annual report of usage, and DMPs may of course report this information more frequently at their option. Such reporting should also include the same data fields required for the snapshot discussed above to assist in work identification and reconciliation. Information for the same track does not need to be reported more than once. With respect to the required snapshot discussed above, that should be delivered to the MLC as soon as commercially reasonable, but no later than contemporaneously with the first annual reporting.

2. Royalty Payment and Accounting Information

The NPRM required DMPs that do not receive an invoice from the MLC to provide ''a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license . . . including but not limited to the number of payable units . . . *whether pursuant to a blanket license, voluntary license, or individual download license*.'' [290] Similarly, blanket licensees that do receive an invoice are required to provide ''all information necessary for the mechanical licensing collective to compute . . . the royalties payable under the blanket license . . . including but not limited to the number of payable units . . . *whether pursuant to a blanket license, voluntary license, or individual download license*.'' The DLC asked the Office to confirm its understanding that this language only requires reporting usage information, not royalty payment or accounting information, for any uses under voluntary licenses or individual download licenses.[291] The DLC is correct in its understanding that the language requires DMPs to report only usage information for uses made under voluntary or individual download licenses.

The International Confederation of Societies of Authors and Composers (''CISAC'') & the International Organisation representing Mechanical

concerning the MLC in a parallel rulemaking. *See* 85 FR 22559 (Apr. 22, 2020).

[282] *See* DLC *Ex Parte* Letter June 25, 2020 at 2–3. Although the DLC had previously discussed street date in terms of an ERN data field called ''StartDate,'' which the Office understands to be more of a planned or intended street date that does not necessarily equate to the actual street date (and which the RIAA says the use of would raise confidentiality concerns, *see* RIAA *Ex Parte* Letter Aug. 24, 2020 at 1), the DLC does not object to using the actual street date, so long as it is not the only date option. *See* DLC *Ex Parte* Letter Aug. 27, 2020 at 2.

[283] *See* MLC NPRM Comment at 30 (''The 'date on which the blanket licensee first obtains the sound recording' is . . . vague and can be interpreted many different ways by many different DMPs, resulting in inconsistent dates.''). The RIAA also raised confidentiality concerns over this date, RIAA *Ex Parte* Letter Aug. 24, 2020 at 1–2, but the DLC disputes that this information can properly be considered confidential, DLC *Ex Parte* Letter Aug. 27, 2020 at 2.

[284] *See* DLC *Ex Parte* Letter June 26, 2020 at 3.

[285] *See id.* at 2 (''[DMPs] should be given a choice of the date to report, based on the [DMP's] specific operational and technical needs.''); *id.* at 3 n.4.

[286] *See* MLC *Ex Parte* Letter June 26, 2020 at 4 (''If instead that data was only maintained in records of use and not reported monthly, the MLC would be required to create a parallel monthly reporting process, and that process would not be able to begin until after the MLC received the regular usage reporting, at which point the MLC would need to contact each DMP each month to request the data, and then each DMP would have to send a separate transmission with such data, which the MLC would have to reintegrate with all of the data that had been reported in the standard monthly reporting.''); MLC NPRM Comment at 31; *see also* Peermusic *Ex Parte* Letter June 26, 2020 at 2; NSAI *Ex Parte* Letter June 26, 2020 at 1.

[287] DLC *Ex Parte* Letter June 26, 2020 at 3; *see id.* at 4 (''The MLC has not adequately justified imposing the investment that would be required by DSPs to engineer their reports of usage to include this date field.'').

[288] *See id.* at 4.

[289] It also renders moot Peermusic's concerns about the length of the proposed rule's retention period. *See* Peermusic NPRM Comment at 6; Peermusic *Ex Parte* Letter June 26, 2020 at 2.

[290] 85 FR at 22541 (emphasis added).

[291] DLC NPRM Comment at 12.

Rights Societies (''BIEM'') raised a pair of issues which the Office address here. First, CISAC & BIEM said, ''[t]he Proposed Rulemaking does not provide rules enabling the MLC to compute and check the calculation of the royalty payment, which will be based on information provided unilaterally by DMPs, with no clear indication of the amount deducted for the performing rights' share.'' [292] CISAC & BIEM additionally proposed that the interim rule ''introduce clear provisions on back-claims in order to enable the MLC to claim works after the documentation has been properly set in the MLC database. For instance, the MLC should be able to invoice works previously used by DMPs, but which had not been ingested until afterwards into the MLC database, or which were subject to conflicting claim [sic].'' [293] Regarding the first issue, the Office believes the statute and proposed rule already adequately address CISAC & BIEM's concern. The MLC has access to DMP records of use under the interim rule and the statutory right to conduct a triennial audit to confirm the accuracy of royalty payments, which together provide the MLC with sufficient ability to compute and check DMP calculations of royalty payments.[294]

Regarding the second issue, the statute and proposed regulations also already address the substance of CISAC & BIEM's proposal.[295] Upon receiving reports of usage from DMPs, the MLC will be able to match royalties for musical works where it has data identifying the work and copyright owner. For those works that are not initially matched due to insufficient data, the MLC is required to engage in ongoing matching efforts.[296] As part of those efforts, the MLC is required to create and maintain a database of musical works that identifies their copyright owners and the sound recordings in which they are embodied.[297] The MLC is expected to employ a variety of automated matching efforts, and also manual matching in some cases. Musical work copyright owners themselves are required to ''engage in commercially reasonable efforts'' to provide information to the MLC and its database regarding names of sound recordings in which their musical works are embodied.[298] The MLC will operate a publicly accessible claiming portal through which copyright owners may claim ownership of musical works, and will operate a dispute resolution committee for resolving any ownership disputes that may arise over musical works, including implementation of ''a mechanism to hold disputed funds pending the resolution of the dispute.'' [299]

Together, these provisions provide mechanisms that Congress considered to be reasonably sufficient for ensuring that royalties that are not initially matched to musical works are ultimately distributed to copyright owners once either (1) the musical work or copyright owner is identified and located through the MLC's ongoing matching efforts, or (2) the work is claimed by the copyright owner, which is what CISAC & BIEM are essentially proposing, as the Office understands it.

Separately, but relatedly, CISAC & BIEM recommended the Office promulgate regulations on ''issues such as dispute resolution procedures or claiming processes that would allow Copyright Owners to raise identification conflicts before the MLC,'' and asked, ''How will claims be reconciled in case a work is also covered by a voluntary licence? Is the MLC also in charge of matching voluntary licences?'' [300] Regarding the first question, as noted above, a DMP is required to provide the MLC with applicable voluntary license information as part of its NOL. Thus, instances where the MLC erroneously distributes blanket license royalties for a work that is covered by a voluntary license should be minimal. Disputes over which license is applicable to a given work will be addressed by procedures established by the MLC's dispute resolution committee. The statute provides that this committee ''shall establish policies and procedures . . . for copyright owners to address in a timely and equitable manner disputes relating to ownership interests in musical works licensed under this section,'' although actions by the MLC will not affect the legal remedies available to persons ''concerning ownership of, and entitlement to royalties for, a musical work.'' [301]

Regarding the second question, the MLC will, as part of its matching efforts, ''confirm uses of musical works subject to voluntary licenses'' and deduct those amounts from the royalties due from DMPs.[302] The MLC does not otherwise administer voluntary licenses unless designated to do so by copyright owners and blanket licensees.[303]

i. Late Fees

The NPRM was silent on the issue of when late fees are imposed on adjustments to estimates. As it did in comments to the NOI, the DLC called for language to ensure DMPs are not subject to late fees for adjustments to estimates after final figures are determined, so long as adjustments are made ''either before (as permitted under the Proposed Rule) or with the annual report of adjustment or, if not finally determined by then, promptly after the estimated amount is finally determined.'' [304] In support of its proposal, the DLC said, ''[a]lthough the CRJs set the *amount* of the late fee, the Office is responsible for establishing *due dates* for adjusted payments. It is those due dates that establish whether or not a late fee is owed.'' [305] Several commenters objected to this proposal.[306] In particular, the MLC was ''troubled by the DLC's arguments'' and explained that ''if the DMPs are concerned about having to pay late fees, whenever they estimate an input they should do so in a manner that ensures that there will not be an underpayment of royalties. To permit DMPs to estimate inputs in a manner that results in underpayment to songwriters and copyright owners, without the penalty of late fees, encourages DMPs to underpay, to the detriment of songwriters and copyright owners.'' [307] The MLC proposed to add language prescribing that no use of an

[292] CISAC & BIEM NPRM Comment at 3–4.

[293] *Id.* at 4.

[294] 17 U.S.C. 115(d)(4)(D). DMPs are also required to have annual reports of usage certified by a CPA, providing an additional check on the accuracy of royalties.

[295] The Copyright Office has commissioned and published a report on *Collective Rights Management Practices Around the World* as baseline informational material for the public to reference in replying to a notice of inquiry seeking public comment in connection with the Office's policy study regarding best practices the MLC may implement to reduce the overall incidence of unclaimed royalties. Susan Butler, *Collective Rights Management Practices Around the World: A Survey of CMO Practices to Reduce the Occurrence of Unclaimed Royalties in Musical Works* 3 (2020), *https://www.copyright.gov/policy/unclaimed-royalties/CMO-full-report.pdf.* The report may also be helpful in highlighting the similarities and differences between the MLC's processes and existing processes used by foreign CMOs as they pertain to this proceeding.

[296] 17 U.S.C. 115(d)(3)(C)(i)(III).

[297] *Id.* at 115(d)(3)(E).

[298] *Id.* at 115(d)(3)(E)(iv).

[299] *Id.* at 115(d)(3)(K)(ii), (J)(iii)(I); MLC Initial NOI Comment at 84, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001.* The MLC is required to ''deposit into an interest-bearing account . . . royalties that cannot be distributed due to . . . a pending dispute before the dispute resolution committee . . .'' 17 U.S.C. 115(d)(3)(G)(i)(III)(bb).

[300] CISAC & BIEM NPRM Comment at 4.

[301] 17 U.S.C. 115(d)(3)(K).

[302] *Id.* at 115(d)(3)(G)(i)(I)(bb).

[303] *Id.* at 115(d)(11)(C), (d)(3)(C)(iii).

[304] DLC NPRM Comment at 14.

[305] *Id.*

[306] *See* MLC NPRM Comment at 36–37; AIMP NPRM Comment at 4–5; Peermusic NPRM Comment at 5.

[307] MLC NPRM Comment at 36–37.

estimate changes or affects the statutory due dates for royalty payments or the applicability of late fees to any underpayment of royalties that results from using an estimate.[308] AIMP raised general concerns about the problem of late royalty payments and said ''expanded use of estimates, and the result of retroactive adjustment of royalty payments, does create increased risk and additional burden to copyright owners.'' [309] And Peermusic wrote that it ''appreciate[d] the Copyright Office's rejection of the DLC request that underpayments, when tied to 'estimates,' should not be subject to the late fee provision of the CRJ regulations governing royalties payable under Section 115, and we would request that the regulations be clear on this point.'' [310]

After careful consideration, the Office has adopted the language as proposed in the NPRM.[311] The Office appreciates the need for relevant regulations to avoid unfairly penalizing DMPs who make good faith estimates from incurring late fees due to subsequent finalization of those inputs outside the DMPs' control, and also to avoid incentivizing DMPs from applying estimates in a manner that results in an initial underpayment that delays royalty payments to copyright owners and other songwriters. Under the currently operative CRJ regulation, late fees are due ''for any payment owed to a Copyright Owner and remaining unpaid after the due date established in [ ] 115(d)(4)(A)(i),'' [312] that is, ''45 calendar days [ ] after the end of the monthly reporting period.'' [313] The statute itself specifies that where ''the Copyright Royalty Judges establish a late fee for late payment of royalties for uses of musical works under this section, such fee shall apply to covered activities under blanket licenses, as follows: (i) Late fees for past due royalty payments shall accrue from the due date for payment until payment is received by the mechanical licensing collective.'' [314] Meanwhile, the Office is now adopting, as directed by statute, regulations regarding adjustments to these reports, including ''mechanisms to account for overpayment and underpayment of royalties in prior periods'' and associated timing for such adjustments.[315] It is not clear that the best course is for the Office to promulgate language under this mandate that accounts for the interplay between the CRJs' late fee regulation and the Office's interim rule's provision for adjustments, particularly where the CRJs may wish themselves to take the occasion of remand or otherwise update their operative regulation in light of the interim rule.[316] The Office intends to monitor the operation of this aspect of the interim rule, and as appropriate in consultation with the CRJs.

ii. Estimates

The Office also declines to adopt the MLC's proposal to narrow a DMP's ability to use estimates for any inputs that cannot be finally determined at the time a report of usage is due, an ability the MLC described as ''overly broad and permissive.'' [317] The Office concludes that the NPRM does not provide unwarranted discretion to DMPs to use estimates. An input is either finally determined at the time a report of usage is due or it is not, and in the latter case, the rule provides that a DMP can only rely on estimates when the reason for the lack of a final input is beyond the DMP's control. Furthermore, the Office notes that while the MLC originally proposed limiting the use of estimates to performance royalties,[318] it has now expanded its proposal to include two additional circumstances where DMPs could provide estimates that the Office provided as examples in the NPRM preamble (total cost of content and inputs, subject to bona fide, good faith disputes between the DMP and a third party).[319] The Office believes the interim rule will benefit from the flexibility the current language provides and, based on the current record, that the potential for abuse is minimal.

The Office does appreciate the concerns raised by the MLC and others regarding the use of estimates, so while it declines to narrow the ability to use estimates, it has adopted the majority of the MLC's proposal to require DMPs using estimates to ''(i) clearly identify in its Usage Report any and all royalty calculation inputs that have been estimated; (ii) provide the justification for the use of estimate; (iii) provide an explanation as to how the estimate was made, and (iv) in each succeeding Usage Report, provide an update and report on the status of all estimates taken in prior statements.'' [320] The interim rule includes the first three requirements but not the fourth; the Office believes the rules provide sufficient transparency because they already include deadlines for making adjustments of estimates and require DMPs to explain reason(s) for adjustments when they deliver a report of adjustment after the estimate becomes final.

One additional scenario where DMPs may need to rely on estimates is where a DMP is operating under both the blanket license and voluntary licenses, has not filed a report of usage within 15 days of the end of the applicable reporting period, and thus will not receive an invoice prior to the royalty payment deadline, but will receive notification from the MLC of any underpayment or overpayment by day 70.[321] The MLC acknowledged the need for estimates under these circumstances, but added, ''there should not be an extensive delay between the time of the estimate and the time the adjustment based on actual usage can be made. The required adjustment should be made within 5 calendar days of the provision to the DMP of the response file, and the DMP should not be permitted to make this adjustment 18 months after the estimate, as is currently permitted in the Proposed Regulation by reference to § 210.27(k).'' [322] The interim rule adopts the MLC's proposed amendment, and no report of adjustment is required in that circumstance.

iii. Invoices and Response Files

A persistent issue throughout this rulemaking has been how the regulations should address the

[308] MLC NPRM Comment App. at xiv.

[309] AIMP NPRM Comment at 4–5.

[310] Peermusic NPRM Comment at 5.

[311] Relatedly, though, the Office understands that a DMP following the adjustment process laid out in the regulations should not be deemed in default for failure to make earlier payments, provided the adjustment is timely made. For example, if a DMP made a reasonable good-faith estimate of a performance royalty that turned out to result in a significant underpayment of the relevant mechanical royalties, upon the establishment of the final rates, as long as the DMP paid the remainder mechanical royalties in accordance with the adjustment process, neither this timing nor the underpayment would be deemed material or otherwise put the DMP in default.

[312] 37 CFR 385.3.

[313] 17 U.S.C. 115(d)(4)(A)(i).

[314] *Id.* at 115(d)(8)(B).

[315] *Id.* at 115(d)(4)(A)(iv)(II).

[316] *See* 85 FR at 22530 (''Any applicable late fees are governed by the CRJs, and any clarification should come from them.'').

[317] MLC NPRM Comment at 33. *See also* AIMP NPRM Comment at 4–5 (''It is also important to note that expanded use of estimates, and the result of retroactive adjustment of royalty payments, does create increased risk and additional burden to copyright owners''); Peermusic NPRM Comment at 5 (''Peermusic is particularly concerned about what appears to an expansion in the proposed rules to DMP's use of estimates in royalty calculations'').

[318] 85 FR at 22530.

[319] *Compare* MLC NPRM Comment App. at xii–xiii, *with* 85 FR at 22530 (inputs subject to bona fide, good faith disputes between the DMP and a third party), 85 FR at 22541 (''the amount of applicable consideration for sound recording copyright rights'').

[320] MLC NPRM Comment at 34; *see also* AIMP NPRM Comment at 5; Peermusic NPRM Comment at 5.

[321] MLC NPRM Comment at 34–35.

[322] *Id.*

choreography between a DMP and the MLC through which a DMP receives royalty invoices and response files from the MLC after delivering monthly reports of usage, but before royalty payments are made or deducted from a DMP's account with the MLC.[323] Although the MMA does not explicitly address invoices and response files, the DLC has consistently articulated the importance of addressing requirements for each in Copyright Office regulations.[324] The Office endeavored in its NPRM to balance the operational concerns of all parties consistent with the MMA's legal framework and underlying goals. The DLC, MLC, and Music Reports each commented on this aspect of the NPRM, and the interim rule updates the proposed rule in some ways based on these comments, as discussed below.[325]

While ''appreciat[ing]'' the proposed rule's general approach, the DLC recommended requiring the MLC to provide an invoice to a DMP five days earlier than what the Office proposed.[326] The Office declines to adopt this recommendation because it believes the timeline in the proposed rule is reasonable and can be adjusted if necessary once the blanket license becomes operational. The Office also declines to add the MLC's proffered amendment that would only require it to ''engage in efforts'' to deliver an invoice within 40 days after the end of the reporting period for timely reports of usage; the MLC has represented that 25 days is sufficient for it to process a report of usage and return an invoice, so if a DMP submits a report of usage within the time period entitling it to an invoice under the interim rule (which is 30 days earlier than it is required to submit a report of usage under the statute), it seems reasonable for the DMP to have certainty that it will receive an invoice prior to the statutory royalty payment deadline.[327]

The interim rule clarifies when the MLC must provide a response file to a DMP. The rule essentially takes the approach proposed by the MLC that eliminates any set deadline for the MLC to provide a response file if a DMP fails to file a report of usage within the statutory timeframe,[328] by providing that the MLC need only provide a response file ''in a reasonably timely manner'' in such circumstances. It also accepts the DLC's recommendation of permitting a DMP to request an invoice even when it did not submit its monthly report of usage within 15 calendar days after the end of the applicable monthly reporting period. [329]

The MLC asked the Office to clarify that a DMP is required by statute to pay royalties owed within 45 days after the end of the reporting period, even if the MLC is unable to deliver a response file within the time period required under the rule, and that the rule should only require the MLC to ''use its efforts'' to meet the interim response file deadline.[330] The Office declines to adopt this proposal—the payment deadline is already spelled out in the statute, so any rule would be redundant.[331]

The NPRM provided that response files should generally ''contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to DMPs by applicable third-party administrators.'' The DLC requested that the rule ''should provide further specification and detail regarding the content'' in response files to ''ensure the regular and prompt receipt of necessary accounting information.'' [332] Specifically, the DLC proposed requiring the following fields: ''song title, vendor-assigned song code, composer(s), publisher name, publisher split, vendor-assigned publisher number, publisher/license status, [ ] royalties per track[,] . . . top publisher, original publisher, admin publisher and effective per play rate[,] and time adjusted plays.'' [333] In an *ex parte* meeting, the MLC reiterated its position that the regulations need not set forth this level of detail, but confirmed that it intended to include the information identified by the DLC in response files.[334] The interim rule adopts the DLC's proposal to spell out the minimum information required in response files, with the Office using language that conforms with the MLC's terminology.

Finally, the Office has added language that permits DMPs to make a one-time request for response files in light of comments from the DLC stating that ''the operational need for a response file is unlikely to change from month to month.'' [335]

The Office recognizes the above provisions addressing invoices and response files include a number of specific deadlines for both the MLC and DMPs and understands that they have been made based on reasonable estimates, but that before the blanket license becomes operational they remain only estimates. The Office would welcome updates from the MLC's operations advisory committee, or the MLC or DLC separately if, once the process becomes operational, the parties believe changes are necessary.

iv. Adjustments

The DLC proposed deleting two portions of the proposed rule addressing reports of adjustments: First, the requirement that DMPs include in the description of adjustment ''the monetary amount of the adjustment'' and second, the requirement to include ''a detailed and step-by-step accounting of the calculation of the adjustment sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the adjustment and the accuracy of the adjustment.'' [336] The DLC explained, ''[a]lthough DMPs must provide *inputs* to the MLC, it is typically the MLC, not the providers, that will use those inputs to perform a 'step-by-step accounting' and determine the 'monetary amount[s]' due to be paid.'' [337] In response, the MLC confirmed its shared understanding that it would be verifying this math and did not oppose the DLC's proposal.[338] The MLC proposed additional language, modeled off language in the monthly usage reporting provisions found in § 210.27(d)(1)(ii) of the proposed rule to confirm ''that DMPs must always provide all necessary royalty pool calculation information.'' [339] Finding the above reasonable, the Office adopts the DLC's proposal with the addition of the language proposed by the MLC.

The DLC separately requested that the rule permit a DMP the option of

[323] *See* 85 FR at 22528.

[324] DLC Initial NOI Comment at 13; DLC Reply NOI Comment at 13–16; DLC *Ex Parte* Letter Feb. 14, 2020.

[325] Music Reports' suggestion that the MLC includes a unique, persistent numerical identifier for individual shares of a work in response files is addressed above.

[326] DLC NPRM Comment at 12.

[327] 85 FR at 22528.

[328] MLC NPRM Comment at 43–44. This concern stems from the requirement that the MLC provide response files within 70 days of the end of the applicable month. The MLC suggested that the text of the rule could be read to require a response file from the MLC on day 70 even if a DMP submitted a usage report on day 69, which would be operationally untenable. *Id.* at 44.

[329] DLC NPRM Comment at 12–13.

[330] MLC NPRM Comment at 43.

[331] 17 U.S.C. 115(d)(4)(A)(i).

[332] DLC NPRM Comment at 13.

[333] *Id.* (internal quotation marks omitted).

[334] MLC *Ex Parte* Letter Aug. 16, 2020 at 3.

[335] DLC NPRM Comment at 12 n.48. The DLC added, ''[w]e understand from our initial conversations with the MLC that it plans to provide such a mechanism.'' *Id.*

[336] *Id.* at 13–14.

[337] *Id.* at 13.

[338] MLC *Ex Parte* Letter Aug. 16, 2020 at 2.

[339] *Id.*

requesting a refund for overpayments instead of an offset or credit.[340] The Office has added this option to the rule.[341]

Regarding the permissible categories that may be adjusted for annual reports of usage, ARM suggested a slight expansion of the audit exception in the proposed rule to include audits by sound recording copyright owners.[342] It explained that ''[i]t is highly unlikely that an audit by a sound recording copyright owner would be completed before an annual statement issues, meaning that there should be an exception for adjusting TCC in past annual statements based on a sound recording audit.'' [343] The Office accepts ARM's suggestion as reasonable and has added slightly broader language to permit a report of adjustment adjusting an annual report of usage following any audit of a blanket licensee.

3. Format and Delivery

The MLC and DLC each offered suggested changes to the report of usage format and delivery requirements. The MLC asked that DMPs that either also engage in voluntary licensing or operate as ''white-label'' services be excluded from being able to use a simplified format for reports of usage.[344] The DLC recommended amending the proposed rule in the opposite direction and permit all DMPs, regardless of size or level of sophistication, to elect to use a simplified report of usage format.[345] The Office declines to make either change. As noted in the NPRM, ''[i]n accord with both the MLC and DLC proposals, the Office does not propose to provide more detailed requirements in the regulations, in order to leave flexibility as to the precise standards and formats.'' [346] The NPRM proposed to ''require the MLC to offer at least two options, where one is dedicated to smaller DMPs that may not be reasonably capable of complying with the requirements that the MLC may see fit to adopt for larger DMPs.'' [347] The DLC's proposal runs contrary to the logic for requiring a simplified format. And the MLC's proposal would seem unnecessary given the flexibility afforded by the rule; the MLC retains the discretion to include limitations in its format requirements that address its concerns, and its ability to work with DMPs to develop such requirements would likely produce more optimal results on this issue than bright-line regulations developed by the Office.

The Office has adopted the DLC's proposal to include a requirement that the MLC provide DMPs with confirmation of receipt of both reports of usage and payment.[348] The Office additionally has determined that such confirmation should be provided within a specified time period and believes that two business days is reasonable, given that this process will likely be automated.

i. Modification of Report of Usage Format Requirements

The DLC raised concerns about what it describes as the ''unfettered authority'' for the MLC to modify format and payment method requirements and proposed the addition of procedural guardrails in the rule, specifically, ''that the MLC cannot impose new requirements under Section 210.27(h) except after a thorough and good-faith consultation with the Operations Advisory Committee established by the MMA, with due consideration to the technological and cost burdens that would result, and the proportionality of those burdens to any expected benefits.'' [349] Although the Office assumes that the MLC and DLC will regularly consult on these and other operational issues, particularly through the operations advisory committee, it has added the suggested language to the interim rule.

The DLC raised a related concern that this provision ''could be used [by the MLC] to override the Office's determinations about the appropriate content of the reports of usage.'' [350] The Office adopts the DLC's proposed language prohibiting the MLC from imposing reporting requirements otherwise inconsistent with this section.

Next, the DLC proposed increasing the time period in which DMPs must implement modifications made by the MLC to reporting or data formats or standards from six months to one year, noting the operational challenges for services to ''implement new data fields and protocols on a platform-wide basis.'' [351] The Office is persuaded by the DLC's explanation and incorporates the proposal in the interim rule.

Finally, the DLC also expressed concern that a proposed provision which addressed instances of IT outages by the MLC did not encompass instances where the DMP is unaware of the outage resulting in a usage report or royalty payment not being received by the MLC.[352] It stated, ''[l]icensees should not be held to a strict 2- or 5-day deadline to rectify problems of which they are not immediately aware,'' and proposed regulatory language to address this scenario.[353] The Office has adopted this proposal in the interim rule.

ii. Certification of Monthly and Annual Reports of Usage

The NPRM included rules regarding certification by DMPs of both monthly and annual reports of usage, which generated a number of comments. SGA supported the annual certification requirement, saying, ''[t]his tool of oversight is essential to the smooth functioning of the MLC, and will assist in the fulfillment of three of the most important mandates of the Act: efficiency, openness and accountability.'' [354] SONA supported the certification requirements in general and specifically called the annual certification requirement ''imperative,'' saying, ''[t]his level of certification is a fundamental element of promoting accuracy and transparency in royalty reporting and payments to copyright owners whose musical works are being used by these DMPs.'' [355] As noted above, the MLC proposed an amendment to the certification requirement with respect to data collection efforts.[356] Finally, the DLC proposed two amendments, discussed in turn below.

First, the DLC proposed language to address its concern that the proposed rule would require DMPs to certify royalty calculations they do not make,

[340] DLC NPRM Comment at 14.

[341] The Office has also made clear that any underpayment is due from DMPs contemporaneously with delivery of the report of adjustment, or promptly after being notified by the mechanical licensing collective of the amount due.

[342] ARM NPRM Comment at 5 n.4.

[343] *Id.*

[344] MLC NPRM Comment at 42.

[345] DLC NPRM Comment at 10.

[346] 85 FR at 22534.

[347] *Id.* Separately, the Office notes the reply comments from Music Librarians, Archivists, and Library Copyright Specialists in response to the NOI, which encouraged ''the Office to include options in the new blanket licensing structure appropriate for libraries, archives, museums, and other educational and cultural institutions.'' Quilter, et al. Reply NOI Comment at 1. Although those comments spoke broadly about flexible licensing options, and the Office cannot expand the statutory contours of the section 115 compulsory license, the requirement for the MLC to provide a simplified report of usage format can be seen as one specific way for ensuring the blanket license is a workable option for the types of nonprofit and educational institutions identified in the comment.

[348] DLC NPRM Comment at 13.

[349] *Id.* at 11.

[350] *Id.* at 10.

[351] *Id.* at 11.

[352] *Id.* at 17.

[353] *Id.*

[354] SGA NPRM Comment at 2.

[355] SONA NPRM Comment at 5; *see id.* at 4 (''SONA and MAC are pleased that the Copyright Office has confirmed the importance of robust certification requirements for usage reports provided under blanket licenses by DMPs.'').

[356] MLC NPRM Comment at 10–11; *see also* Peermusic NPRM Comment at 4 (agreeing with MLC's recommendation for ''robust certification of compliance'').

since it is the MLC that generally bears responsibility for applying and calculating the statutory royalties based on the DMPs' reported usage.[357] The Office has adopted the majority of the DLC's proposed language, with some changes. First, the interim rule uses the language ''to the extent reported'' in place of the DLC's proposed ''only if the blanket licensee chose to include a calculation of such royalties.'' The Office believes this more accurately clarifies that, under the blanket license, DMPs are no longer solely responsible for making all royalty calculations.[358] Notwithstanding this clarification, the Office draws attention to the interim rule's further requirement that DMPs must still certify to any underlying data necessary for such calculations.

Second, the DLC commented that ''there are inconsistencies in the regulatory text's description of the accountant's certifications. After consulting with the auditor for one of the DLC member companies, we have proposed changes that use more consistent language throughout and are in better alignment with the relevant accounting standards and practices.'' [359] No party raised objections to these proposed technical changes. The Office believes it is reasonable to largely accept the representation that this language better conforms to and reflects standard accounting practices and has largely adopted the DLC's proposed language.[360]

iii. Voluntary Agreements to Alter Process

The NPRM ''permit[ted] individual DMPs and the MLC to agree to vary or supplement the particular reporting procedures adopted by the Office—such as the specific mechanics relating to adjustments or invoices and response files,'' with two caveats to safeguard copyright owner interests.[361] ''First, any voluntarily agreed-to changes could not materially prejudice copyright owners owed royalties under the blanket license. Second, the procedures surrounding the certification requirements would not be alterable because they serve as an important check on the DMPs that is ultimately to the benefit of copyright owners.'' [362] Two commenters raised concerns with this proposal. FMC appreciated the proposal but asked the Office to consider ''language to stipulate how any voluntary agreements between the MLC and DLC would be disclosed and/or announced publicly, for the sake of additional transparency.'' [363] SONA said that the caveats were insufficient because they would not prevent the MLC from entering into an agreement with a DMP that disregards statutory or regulatory terms, and SONA ''oppose[s] the adoption of any rule that would permit a blanket licensee to provide less robust reporting that what the MMA and reporting regulations require.[364]

The interim rule addresses both these concerns. It requires the MLC to maintain a publicly accessible list of voluntary agreements and specifies that such agreements are considered records that a copyright owner is entitled to access and inspect under 17 U.S.C. 115(d)(3)(M)(ii).[365] It also clarifies that voluntary agreements are limited to modifying only procedures for usage reporting and royalty payment, not substantive requirements such as sound recording and musical work information DMPs are required to report.

4. Documentation of Records of Use

Pursuant to its statutory authority, the Office proposed ''regulations setting forth requirements under which records of use shall be maintained and made available to the mechanical licensing collective by digital music providers engaged in covered activities under a blanket license.'' [366] The proposed rule adopted the same general approach regarding records of use under the MMA that was previously taken with regards to the nonblanket section 115 license, obligating DMPs to retain documents and records that are ''necessary and appropriate'' to support the information provided in their reports of usage. Some records may be relevant to a DMP's calculations of an input in its report of usage without being necessary and appropriate to support the calculation, and thus outside the scope of the documentation requirement. The NPRM further clarified this language by ''enumerating several nonexclusive examples of the types of records DMPs are obligated to retain and make available to the MLC.'' [367] These examples are meant to be illustrative of the types of ''necessary and appropriate'' documents and records required to be retained under this provision,[368] rather than materially increasing the types of records DMPs currently retain.

The MLC and NSAI supported the proposed records of use provisions, with both proposing the addition of a deadline for DMP compliance with reasonable requests by the MLC for access to records of use.[369] By contrast, the DLC expressed ''significant concerns about these provisions.'' [370] The DLC's overall concern is that the documentation requirements are ''significantly more extensive than DLC proposed in its comments,'' and raised

[357] DLC NPRM Comment at 18.

[358] The Office notes that under the blanket license, while DMPs are never making the actual ultimate royalty calculation for a particular musical work, they are doing varying degrees of relevant and important calculations along the way, the extent to which depends on whether or not they will receive an invoice under paragraph (g)(1)—if a DMP does not, then it must calculate the total royalty pool; if it does, then it must calculate or provide the underlying inputs or components that the MLC will use to calculate the pool, and then the amount per work from there.

[359] DLC NPRM Comment at 19.

[360] Among the changes the Office declines to make is substituting ''presents fairly'' for ''accurately represents.'' While the Office appreciates the DLC's representation of its proposed changes as increasing consistency and alignment with relevant accounting standards and practices, this particular change strikes the Office as perhaps more meaningful, and the Office is hesitant to adopt it without further elaboration. *See* 85 FR at 22534 (''The current certification requirements were adopted in 2014 after careful consideration by the Office, and the Office is disinclined to relitigate the details of these provisions unless presented with a strong showing that they are unworkable either because of something specifically to do with the changes made by the MMA or some other significant industry change that occurred after they were adopted.'').

[361] *Id.*

[362] *Id.*

[363] FMC NPRM Comment at 3.

[364] SONA NPRM Comment at 13.

[365] Under the statute, such records are ''subject to the confidentiality requirements prescribed by the Register of Copyrights.'' 17 U.S.C. 115(d)(3)(M)(i). The Office is addressing confidentiality considerations in a parallel rulemaking. 85 FR at 22559. While the interim rule refers to confidential information in a few provisions, it does not directly reference the Office's forthcoming confidentiality regulations. The Office intends to adjust the interim rule to directly reference the Office's confidentiality regulations once they take effect.

[366] 17 U.S.C. 115(d)(4)(A)(iii), (iv)(I).

[367] 85 FR at 22535.

[368] For example, the proposed rule requires DMPs to retain ''Records and documents with information sufficient to reasonably demonstrate whether and how any royalty floor established in part 385 of this title does or does not apply'' and ''Records and documents with information sufficient to reasonably demonstrate, if applicable, whether service revenue and total cost of content, as those terms may be defined in part 385 of this title, are properly calculated in accordance with part 385 of this title.'' *Id.* at 22546. Under the current 37 CFR 385.22, certain royalty floors are calculated based on the number of DMP subscribers, and the Office understands reports of usage to typically only provide the total number of subscribers. But DMPs may offer different types of subscription plans, such as a family plan or a student plan, and under 37 CFR 385.22(b), such subscribers are weighted when calculating total subscribers (a family plan is treated as 1.5 subscribers, while a student plan is treated as 0.5 subscribers under the regulation). This provision would permit the MLC to access documentation that discloses those underlying numbers if necessary to support the reported total subscriber number.

[369] MLC NPRM Comment at 44–45; NSAI NPRM Comment at 2.

[370] DLC NPRM Comment at 19–20.

questions about the interplay between this provision and the MLC's statutory triennial audit right, allowing for a more thorough examination of royalty calculation records.[371] While the Office has adjusted the proposed rule, as addressed below in response to other specific DLC suggestions, it believes these general objections were essentially already considered and appropriately addressed by the NPRM.[372] As noted, the proposed rule was intended as a compromise between the need for transparency and the ability of the MLC to ''engage in efforts to . . . confirm proper payment of royalties due'' [373] on the one hand, with a desire to ensure that the blanket license remains a workable tool and the accounting procedures are not so complicated that they make the license impractical on the other.[374] The provisions are meant to allow the MLC to spot-check royalty provisions; [375] but not to provide the MLC with unfettered access to DMP records and documentation. And setting aside MLC access, general obligations relating to retention of records have been a feature of the section 115 regulations since at least implementation of the Copyright Act of 1976.[376] As an interim rule, the Office can subsequently expand or limit the recordkeeping provisions, if necessary.[377]

iv. Retention Period

The NPRM proposed requiring DMPs operating under the blanket license to ''keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such report of usage'' for a period of five years from the date of delivery of a report of usage to the MLC. The Office noted it ''may consider extending the retention period to seven years to align with the statutory recordkeeping requirements the MMA places on the MLC.'' [378] FMC supported this extension, saying, it ''would help engender necessary trust in the system from songwriters—if there are questions or problems, parties would be able to go back and look at the data.'' [379] The MLC also proposed extending the retention period from five to seven years.[380] No commenter opposed the proposed extension. Therefore, the Office is adopting a seven-year retention period in the interim rule to afford greater transparency and harmonize the record retention period for DMPs with the statutory retention period for the MLC.[381] Additionally, the Office is adopting the MLC's proposed amendment clarifying that the retention period for records relating to an estimate accrues from receipt of the report containing the final adjustment. This rule is roughly analogous to the current documentation rule in 37 CFR 210.18, which bases the retention period for licensees from the date of service of an annual or amended annual statement.

v. Non-Royalty Bearing DPDs

Another concern raised by the DLC relates to the proposed requirement to retain records and documents accounting for DPDs that do not constitute plays, constructive plays, or other payable units. Although the DLC says this provision is ''unnecessary because these are not relevant to the information set forth in a report of usage,'' [382] the Office disagrees; this provision is relevant to confirming reported royalty-bearing uses. ''Play'' is a defined term under the current section 385, and retention of these records may facilitate transparency in understanding adherence to this regulatory definition.

The DLC further argues that the CRJs have already ''issued regulations related to recordkeeping of a narrower set of uses that do not affect royalties—promotional and free trial uses—after an extensive ratesetting proceeding, pursuant to its separate authority to issue recordkeeping requirements,'' and that ''[r]ather than dividing responsibility for establishing recordkeeping rules for these closely related categories of uses between the Copyright Office and the CRB, it would be far more appropriate for the CRB to address any need to retain an expanded universe of non-royalty-related information, in the context of the next ratemaking proceeding.'' [383] The DLC misconstrues the division of authority between the Office and the CRJs. The Office has previously opined on the division of authority between it and the CRJs over the pre-MMA section 115 license and concluded that ''the scope of the CRJs' authority in the areas of notice and recordkeeping for the section 115 license must be construed in light of Congress's more specific delegation of responsibility to the Register of Copyrights.'' [384] The CRJs have also previously stated that they can adopt notice and recordkeeping rules ''to the extent the Judges find it necessary to augment the Register's reporting rules.'' [385] Finally, notwithstanding the CRJs' authority to ''specify notice and recordkeeping requirements of users of the copyrights at issue,'' in their determinations,[386] the MMA eliminated the section 115 provision regarding CRJ recordkeeping authority [387] and specifically assigned that authority, for the blanket license, to the Copyright Office.[388] The Office concludes that it is the appropriate body to promulgate these recordkeeping provisions under the MMA.

vi. Royalty Floors

The DLC raised some concern that the requirement for keeping ''records and documents regarding whether and how any royalty floor is established [ ] is redundant of the other provisions, particularly paragraph (m)(1)(vi), which already requires retention of all information needed to support royalty calculations, including the various inputs into royalty floors.'' [389] The Office notes that there is conceivably some distinction between records about whether and how floors apply and records about the various inputs that go into the determination of applying the floors, meaning the two provisions are not superfluous. And to the extent there is any redundancy between recordkeeping provisions, such overlap would seem to be harmless, and so the Office has not removed the provision identified by the DLC.

vii. Access By the MLC

The NPRM also limited access to records of use by the MLC. The interim rule is amended to require a DMP to make arrangements for access to records

[371] *Id.* at 19. *See* 17 U.S.C. 115(d)(4)(D)(i).

[372] *See, e.g.,* 85 FR at 22529–30 (rejecting the MLC's proposal for monthly reporting of certain types of information but explaining they would be included in recordkeeping requirements, addressing interplay with the triennial audit right); *id.* at 22535 (proposing recordkeeping retention and access requirements, including declining to adopt some of the MLC's more expansive proposals).

[373] *See* 17 U.S.C. 115(d)(3)(G)(i)(I)(cc).

[374] 85 FR at 22526.

[375] *See* NSAI NPRM Comment at 2 (''[W]hile the MLC's ability to audit a digital service once every three years is an important tool for license administration, it is no substitute for a trusted administrator like the MLC having ongoing visibility into royalty accounting practices.'').

[376] *See* 42 FR 64889, 64894 (Dec. 29, 1977). *See also* 43 FR 44511, 44515 (Sept. 28, 1978) (discussing records of use retention period provision in connection with statute of limitations for potential claims).

[377] The Office can also update this rule if the relevant provisions of 37 CFR part 385 change.

[378] 85 FR at 22534.

[379] FMC NPRM Comment at 3.

[380] MLC NPRM Comment App. at xxvii.

[381] 17 U.S.C. 115(d)(3)(M)(i).

[382] DLC NPRM Comment at 19 (internal quotation marks and brackets omitted).

[383] *Id.*

[384] 73 FR 48396, 48397–98 (Aug. 19, 2008).

[385] 84 FR 1918, 1962 (Feb. 5, 2019).

[386] 17 U.S.C. 803(c)(3).

[387] *See id.* at 115(c)(3)(D) (2017).

[388] *Id.* at 115(d)(4)(A)(iii), (iv)(I); *see also* 73 FR at 48397–98 (discussing Congress's more specific delegation to the Copyright Office).

[389] DLC NPRM Comment at 19.

within 30 days of a request from the MLC, as suggested by the MLC and endorsed by NSAI.[390] The interim rule also limits the frequency that the MLC can request records of use to address concerns raised by the DLC, but with a less expansive limit than the DLC suggested.[391] Factoring into account the MLC's countervailing comments, the Office believes a more frequent period may be appropriate, and the interim rule thus limits the MLC to one request to a particular DMP per quarter, covering a period of one quarter in the aggregate. Finally, the Office clarifies its understanding that the requirement to retain ''[a]ny other records or documents that may be appropriately examined pursuant to an audit under 17 U.S.C. 115(d)(4)(D)'' should not be read as giving the MLC access to documents held pursuant to this category outside of such an audit.[392]

viii. Total Cost of Content

Because the total cost of content (''TCC'') is a fundamental component of the current royalty rates under the blanket license, the NPRM included language permitting the MLC access to ''[r]ecords and documents with information sufficient to reasonably demonstrate . . . whether . . . total cost of content . . . [is] properly calculated.'' ARM voiced strong opposition to this provision.[393] It contended that such access would interfere with highly commercially sensitive agreements between its member record labels and DMPs, and that confidentiality regulations proposed by the Office lacked sufficient enforcement mechanisms to remedy any breach that might occur.[394] The RIAA reiterated its concern in an *ex parte* meeting that access to underlying records and inputs used to calculate the TCC could undermine ''the confidentiality of commercial agreements negotiated between individual record companies and digital music providers (''DMPs'') in a competitive marketplace.'' [395]

The RIAA recognized that the MLC may have a need to confirm that the usage reports were calculated in accordance with the total aggregated TCC figure reflected in DMP financial records (as opposed to terms of agreements with individual record labels or other distributors), and that there may be separate needs for document retention beyond access by the MLC for routine administration functions.[396] Accordingly, it suggested that with respect to TCC, access by the MLC to DMP records ''should be limited to confirming that the DMP accurately reported to the MLC the aggregated TCC figure kept on its books.'' [397] The interim rule has thus retained an obligation on the part of DMPs to keep records sufficient to reasonably support and confirm the accuracy of the TCC figure, while amending the access provision to limit the MLC to only the aggregated figure.

D. Reports of Usage—Significant Nonblanket Licensees

As discussed in the NOI and NPRM, SNBLs are also required to deliver reports of usage to the MLC.[398] Based on the ''fairly sparse'' comments received in response to the notification and the Office's observation that ''[t]he statutory requirements for blanket licensees and SNBLs differ in a number of material ways,'' the Office concluded that it seemed ''reasonable to fashion the proposed rule for SNBL reports of usage as an abbreviated version of the reporting provided by blanket licensees.'' [399] In light of the ''particularly thin record on SNBLs,'' the Office particularly encouraged further comment on this issue.[400]

The Office received little more in response. Only the MLC, DLC, and FMC comments discuss SNBLs, all in brief.[401] FMC says it ''agree[s] that SNBL reporting can serve an array of aims, including distribution of unclaimed royalties and administrative assessment calculations, and general matching support,'' and also ''transparency aims.'' [402] FMC further states that it thus ''tend[s] to favor more robust reporting requirements'' and that ''[r]ecords of use, in particular, should be included.'' [403] FMC does not propose specific regulatory language. The MLC says that ''it seems possible that the MLC may have good reason to include [SNBL] data in the public database to the extent such data is not otherwise available,'' that it plans to ''use usage reporting from SNBLs . . . as part of the determination of administrative assessment allocations,'' and that ''[t]he rule does not provide excessive information, as use in connection with any market share calculation for any distribution of unclaimed accrued royalties would require a full processing and matching of the usage reporting data.'' [404] The MLC does not propose any changes to the NPRM's regulatory language that do not align with changes it also proposed with respect to blanket licensee reporting.[405] The DLC's proposed regulatory language also largely mirrors, to the extent applicable, its proposal for blanket licensee reporting.[406] The DLC further requests a modification to one of the certification provisions specifically for SNBL reporting because it says that it ''incorrectly assumes that such licensees engage in a CPA certification process.'' [407]

Having considered these comments, the record does not indicate to the Office that it should change its overall proposed approach to SNBL reporting requirements. Therefore, the Office is essentially adopting the proposed rule as an interim rule, but with appropriate updates to incorporate and apply the relevant decisions detailed above that the Office has made with respect to blanket licensee reporting requirements. The Office has not carried over the

[390] *See* MLC NPRM Comment at 44–45 (''The MLC retains a concern about the absence of a prescribed time frame for DMP compliance with reasonable requests by the MLC for access to records of use, which could delay the MLC's access to information that the MLC may require on a timely basis. The MLC therefore requests that DMPs be required to provide access to requested information within 30 days of the MLC's request.''); NSAI NPRM Comment at 2 (''NSAI agrees with the MLC that the digital services' obligation to provide reasonable access to records of use on request should have a prompt deadline in the regulations. This will prevent stonewalling and avoid disagreement over such timing.'').

[391] DLC NPRM Comment at 20 (stating ''since the MMA limits audits both in their frequency and their scope, similar limits should apply to the MLC's access to documentation and records of use. DLC therefore proposes that the MLC's access be limited in frequency to once per 12-month period, and limited in scope to no more than two months (in the aggregate) of records.'').

[392] *See id.* at 21, Add. at A–29–30.

[393] ARM NPRM Comment at 4.

[394] *Id.* at 4–5.

[395] RIAA *Ex Parte* Letter June 16, 2020 at 1. The RIAA elaborated, ''[c]ommercial agreements between record companies and DMPs are so highly competitively sensitive they amount to trade secrets and must be treated as such. Because these agreements typically have short terms, they are renegotiated frequently and any leakage of their terms and conditions could have a significant detrimental impact on the streaming marketplace. There are several important considerations: (1) Individual MLC board members may be employees of companies owned by a music group competitor; (2) It is possible to derive the percentage of revenue equivalent of a DMP's payment to each record company once it is known (a) the amount the DMP paid to each record company that month and (b) the DMP's monthly Service Provider Revenue(which is a required part of its monthly mechanical royalty calculation, *see* 37 CFR 385.21); and (3) There is no clear remedy for violating proposed confidentiality regulations, especially given the damage that could ensue.'' *Id.* at 1–2.

[396] *See, e.g.,* supra note 376.

[397] RIAA *Ex Parte* Letter Aug. 24, 2020 at 2.

[398] 84 FR at 49971; 85 FR at 22535.

[399] 85 FR at 22535.

[400] *Id.* at 22535–36.

[401] *See* MLC NPRM Comment at 46, App. at xxx–xxxvii; DLC NPRM Comment at 18, Add. at A–30–38; FMC NPRM Comment at 3.

[402] FMC NPRM Comment at 3.

[403] *Id.*

[404] MLC NPRM Comment at 46.

[405] *See* MLC NPRM Comment App. at xxx–xxxvii.

[406] *See* DLC NPRM Comment Add. at A–30–38.

[407] DLC NPRM Comment at 18, Add. at A–37.

interim rule's expanded audio access and unaltered data requirements because it does not seem necessary to impose those additional obligations on SNBLs given the purpose their reporting serves as compared to blanket licensee reporting.

Similarly, regarding FMC's request to add a records of use provision and generally require more robust reporting, the Office declines to do so at this time, at least based upon the thin current record. The Office believes the interim rule strikes an appropriate balance with respect to SNBLs given the material differences between them and blanket licensees—most notably that SNBLs do not operate under the blanket license and do not pay statutory royalties to the MLC.[408]

As to the DLC's proposal concerning the certification language, the Office declines this request at this time. At least based on the limited record, the Office is not persuaded that the certification requirement for SNBLs should materially differ from the requirement for blanket licensees. The fact that SNBLs may not have traditionally engaged in a CPA certification process in connection with their voluntary licenses does not move the Office to eliminate this component of the certification in the different context of their new statutory obligation to report to the MLC for purposes that go beyond their private agreements—especially considering that the rule does not impose a records of use requirement on SNBLs. To the extent an SNBL does not wish to engage in a CPA certification process, the alternative certification option provided for in the regulations remains available to them.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Interim Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

Subpart A [Removed]

■ 2. Remove subpart A.

[408] As noted in the NPRM, the statutory records of use requirement for blanket licensees does not expressly apply to SNBLs. 85 FR at 22535.

Subpart B [Redesignated as Subpart A] and §§ 210.11 through 210.21 [Redesignated as §§ 210.1 through 210.11]

■ 3. Redesignate subpart B as subpart A and, in newly redesignated subpart A, §§ 210.11 through 210.21 are redesignated as §§ 210.1 through 210.11.

Subpart A [Amended]

■ 4. In newly redesignated subpart A:
■ a. Remove ''§ 210.12(g)(3)(i),'' ''§ 210.12(g)(3)(ii),'' ''§ 210.12(g)(3),'' ''§ 210.12(g),'' ''§ 210.12(h),'' and ''§ 210.12(i)'' and add in their places ''§ 210.2(g)(3)(i),'' ''§ 210.2(g)(3)(ii),'' ''§ 210.2(g)(3),'' ''§ 210.2(g),'' ''§ 210.2(h),'' and ''§ 210.2(i),'' respectively;
■ b. Remove ''§ 210.15'' and add in its place ''§ 210.5'';
■ c. Remove ''§ 210.16(d)(2),'' ''§ 210.16,'' ''§ 210.16(g),'' and ''§ 210.16(g)(3)'' and add in their places ''§ 210.6(d)(2),'' ''§ 210.6,'' ''§ 210.6(g),'' and ''§ 210.6(g)(3),'' respectively;
■ d. Remove ''§ 210.17(d)(2)(iii)'' and ''§ 210.17 of this subpart'' and add in their places ''§ 210.7(d)(2)(iii)'' and ''§ 210.7,'' respectively;
■ e. Remove ''§ 210.18'' and add in its place ''§ 210.8''; and
■ f. Remove ''§ 210.21'' and add in its place ''§ 210.11''.

■ 5. Amend newly redesignated § 210.1 by adding a sentence after the first sentence to read as follows:

§ 210.1 General.

* * * Rules governing notices of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works are located in § 201.18. * * *

§§ 210.12 through 210.20 [Added and Reserved]

■ 6. Add reserve §§ 210.12 through 210.20.

■ 7. Add a new subpart B to read as follows:

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

Sec.

210.21 General.
210.22 Definitions.
210.23 Designation of the mechanical licensing collective and digital licensee coordinator.
210.24 Notices of blanket license.
210.25 Notices of nonblanket activity.
210.26 Data collection and delivery efforts by digital music providers and musical work copyright owners.
210.27 Reports of usage and payment for blanket licensees.
210.28 Reports of usage for significant nonblanket licensees.

§ 210.21 General.

This subpart prescribes rules for the compulsory blanket license to make and distribute digital phonorecord deliveries of nondramatic musical works pursuant to 17 U.S.C. 115(d), including rules for digital music providers, significant nonblanket licensees, the mechanical licensing collective, and the digital licensee coordinator.

§ 210.22 Definitions.

For purposes of this subpart:

(a) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 115(e).

(b) The term *blanket licensee* means a digital music provider operating under a blanket license.

(c) The term *DDEX* means Digital Data Exchange, LLC.

(d) The term *GAAP* means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this section.

(e) The term *IPI* means interested parties information code.

(f) The term *ISNI* means international standard name identifier.

(g) The term *ISRC* means international standard recording code.

(h) The term *ISWC* means international standard musical work code.

(i) The term *producer* means the primary person(s) contracted by and accountable to the content owner for the task of delivering the sound recording as a finished product.

(j) The term *UPC* means universal product code.

§ 210.23 Designation of the mechanical licensing collective and digital licensee coordinator.

The following entities are designated pursuant to 17 U.S.C. 115(d)(3)(B) and (d)(5)(B). Additional information regarding these entities is available on the Copyright Office's website.

(a) Mechanical Licensing Collective, incorporated in Delaware on March 5,

2019, is designated as the mechanical licensing collective; and

(b) Digital Licensee Coordinator, Inc., incorporated in Delaware on March 20, 2019, is designated as the digital licensee coordinator.

§ 210.24 Notices of blanket license.

(a) *General.* This section prescribes rules under which a digital music provider completes and submits a notice of license to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(2)(A) for purposes of obtaining a statutory blanket license.

(b) *Form and content.* A notice of license shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the digital music provider is engaging, or seeks to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) A telephone number and email address for the digital music provider where an individual responsible for managing the blanket license can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the digital music provider's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the digital music provider's eligibility for a blanket license and to provide reasonable notice to the mechanical licensing collective, copyright owners, and songwriters of the manner in which the digital music provider is engaging, or seeks to engage, in any covered activity pursuant to the blanket license. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the digital music provider has a good-faith belief, informed by review of relevant law and regulations, that it:

(A) Satisfies all requirements to be eligible for a blanket license, including that it satisfies the eligibility criteria to be considered a digital music provider pursuant to 17 U.S.C. 115(e)(8); and

(B) Is, or will be before the date of initial use of musical works pursuant to the blanket license, able to comply with all payments, terms, and responsibilities associated with the blanket license.

(ii) A statement that where the digital music provider seeks or expects to engage in any activity identified in its notice of license, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the digital music provider's service(s), or expected service(s), and the manner in which it uses, or seeks to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the digital music provider is, or seeks to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the digital music provider offers, or seeks to offer, as part of its covered activities (the digital music provider may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Services available through discounted pricing plans, such as for families or students.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the digital music provider wishes to provide.

(6) The date, or expected date, of initial use of musical works pursuant to the blanket license.

(7) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(8) A description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). This description should be provided as an addendum to the rest of the notice of license to help preserve any confidentiality to which it may be entitled. With respect to any applicable voluntary license or individual download license executed and in effect before March 31, 2021, the description required by this paragraph (b)(8) must be delivered to the mechanical licensing collective either no later than 10 business days after such license is executed, or at least 90 calendar days before delivering a report of usage covering the first reporting period during which such license is in effect, whichever is later. For any reporting period ending on or before March 31, 2021, the mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license or individual download license for which the collective has not received the description required by this paragraph (b)(8) at least 90 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods. The rest of the notice of license may be delivered separately from such description. The description required by this paragraph (b)(8) shall be sufficient if it includes at least the following information:

(i) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, through which musical works are, or are expected to be, used pursuant to any such voluntary license or individual download license. If such a license pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(ii) The start and end dates.

(iii) The musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for the musical work copyright owner or for an administrator or other representative who has entered into an applicable license on behalf of the relevant copyright owner.

(iv) A satisfactory identification of any applicable catalog exclusions.

(v) At the digital music provider's option, and in lieu of providing the information listed in paragraph (b)(8)(iv) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(vi) A unique identifier for each such license.

(c) *Certification and signature.* The notice of license shall be signed by an appropriate duly authorized officer or representative of the digital music provider. The signature shall be

accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of license to the mechanical licensing collective on behalf of the digital music provider and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Except as provided by 17 U.S.C. 115(d)(9)(A), to obtain a blanket license, a digital music provider must submit a notice of license to the mechanical licensing collective. Notices of license shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of license. Upon submitting a notice of license to the mechanical licensing collective, a digital music provider shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt. The mechanical licensing collective shall send any rejection of a notice of license to both the street address and email address provided in the notice.

(e) *Harmless errors.* Errors in the submission or content of a notice of license, including the failure to timely submit an amended notice of license, that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective to reject a notice or terminate a blanket license. This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A digital music provider may submit an amended notice of license to cure any deficiency in a rejected notice pursuant to 17 U.S.C. 115(d)(2)(A). A digital music provider operating under a blanket license must submit a new notice of license within 45 calendar days after any of the information required by paragraphs (b)(1) through (6) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of license submitted by a digital music provider. Where the information required by paragraph (b)(8) of this section has changed, instead of submitting an amended notice of license, the digital music provider must promptly deliver updated information to the mechanical licensing collective in an alternative manner reasonably determined by the collective. To the extent commercially reasonable, the digital music provider must deliver such updated information either no later than 10 business days after such license is executed, or at least 30 calendar days before delivering a report of usage covering the first reporting period during which such license is in effect, whichever is later. Except as otherwise provided for by paragraph (b)(8) of this section, the mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license or individual download license for which the collective has not received the description required by paragraph (b)(8) of this section at least 30 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods.

(g) *Transition to blanket licenses.* Where a digital music provider obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and seeks to continue operating under the blanket license, a notice of license must be submitted to the mechanical licensing collective within 45 calendar days after the license availability date and the mechanical licensing collective shall begin accepting such notices at least 30 calendar days before the license availability date, provided, however, that any description required by paragraph (b)(8) of this section must be delivered within the time period described in paragraph (b)(8). In such cases, the blanket license shall be effective as of the license availability date, rather than the date on which the notice is submitted to the collective. Failure to comply with this paragraph (g), including by failing to timely submit the required notice or cure a rejected notice, shall not affect an applicable digital music provider's blanket license, except that such blanket license may become subject to default and termination under 17 U.S.C. 115(d)(4)(E). The mechanical licensing collective shall not take any action pursuant to 17 U.S.C. 115(d)(4)(E) before the conclusion of any proceedings under 17 U.S.C. 115(d)(2)(A)(iv) or (v), provided that the digital music provider meets the blanket license's other required terms and conditions.

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a digital music provider that is not required by this section, which the digital music provider may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all blanket licenses that, subject to any confidentiality to which they may be entitled, includes:

(1) All information contained in each notice of license, including amended and rejected notices;

(2) Contact information for all blanket licensees;

(3) The effective dates of all blanket licenses;

(4) For any amended or rejected notice, a clear indication of its amended or rejected status and its relationship to other relevant notices;

(5) For any rejected notice, the collective's reason(s) for rejecting it; and

(6) For any terminated blanket license, a clear indication of its terminated status, the date of termination, and the collective's reason(s) for terminating it.

§ 210.25 Notices of nonblanket activity.

(a) *General.* This section prescribes rules under which a significant nonblanket licensee completes and submits a notice of nonblanket activity to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(b) *Form and content.* A notice of nonblanket activity shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the

significant nonblanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) A telephone number and email address for the significant nonblanket licensee where an individual responsible for managing licenses associated with covered activities can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the significant nonblanket licensee's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the licensee's qualifications as a significant nonblanket licensee and to provide reasonable notice to the mechanical licensing collective, digital licensee coordinator, copyright owners, and songwriters of the manner in which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the significant nonblanket licensee has a good-faith belief, informed by review of relevant law and regulations, that it satisfies all requirements to qualify as a significant nonblanket licensee under 17 U.S.C. 115(e)(31).

(ii) A statement that where the significant nonblanket licensee expects to engage in any activity identified in its notice of nonblanket activity, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the significant nonblanket licensee's service(s), or expected service(s), and the manner in which it uses, or expects to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the significant nonblanket licensee is, or expects to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the significant nonblanket licensee offers, or expects to offer, as part of its covered activities (the significant nonblanket licensee may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Services available through discounted pricing plans, such as for families or students.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the significant nonblanket licensee wishes to provide.

(6) Acknowledgement of whether the significant nonblanket licensee is operating under one or more individual download licenses.

(7) The date of initial use of musical works pursuant to any covered activity.

(8) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(c) *Certification and signature.* The notice of nonblanket activity shall be signed by an appropriate duly authorized officer or representative of the significant nonblanket licensee. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of nonblanket activity to the mechanical licensing collective on behalf of the significant nonblanket licensee and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Notices of nonblanket activity shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of nonblanket activity. Upon submitting a notice of nonblanket activity to the mechanical licensing collective, a significant nonblanket licensee shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt.

(e) *Harmless errors.* Errors in the submission or content of a notice of nonblanket activity, including the failure to timely submit an amended notice of nonblanket activity, that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A significant nonblanket licensee must submit a new notice of nonblanket activity with its report of usage that is next due after any of the information required by paragraphs (b)(1) through (7) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of nonblanket activity submitted by a significant nonblanket licensee.

(g) *Transition to blanket licenses.* Where a digital music provider that would otherwise qualify as a significant nonblanket licensee obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and does not seek to operate under the blanket license, if such licensee submits a valid notice of nonblanket activity within 45 calendar days after the license availability date in accordance with 17 U.S.C. 115(d)(6)(A)(i), such licensee shall not be considered to have ever operated under the statutory blanket license until such time as the licensee submits a valid notice of license pursuant to 17 U.S.C. 115(d)(2)(A).

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a significant nonblanket licensee that is not required by this section, which the significant nonblanket licensee may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all significant nonblanket licensees that, subject to any confidentiality to which they may be entitled, includes:

(1) All information contained in each notice of nonblanket activity, including amended notices;

(2) Contact information for all significant nonblanket licensees;

(3) The date of receipt of each notice of nonblanket activity; and

(4) For any amended notice, a clear indication of its amended status and its relationship to other relevant notices.

§ 210.26 Data collection and delivery efforts by digital music providers and musical work copyright owners.

(a) *General.* This section prescribes rules under which digital music providers and musical work copyright owners shall engage in efforts to collect and provide information to the mechanical licensing collective that may assist the collective in matching musical works to sound recordings embodying those works and identifying and locating the copyright owners of those works.

(b) *Digital music providers.* (1)(i) Pursuant to 17 U.S.C. 115(d)(4)(B), in addition to obtaining sound recording names and featured artists and providing them in reports of usage, a digital music provider operating under a blanket license shall engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service(s) of such digital music provider the information belonging to the categories identified in § 210.27(e)(1)(i)(E) and (e)(1)(ii), without regard to any limitations that may apply to the reporting of such information in reports of usage. Such efforts must be undertaken periodically, and be specific and targeted to obtaining information not previously obtained from the applicable owner or other licensor for the specific sound recordings and musical works embodied therein for which the digital music provider lacks such information. Such efforts must also solicit updates for any previously obtained information if reasonably requested by the mechanical licensing collective. The digital music provider shall keep the mechanical licensing collective reasonably informed of the efforts it undertakes pursuant to this section.

(ii) Any information required by paragraph (b)(1)(i) of this section, including any updates to such information, provided to the digital music provider by sound recording copyright owners or other licensors of sound recordings (or their representatives) shall be delivered to the mechanical licensing collective in reports of usage in accordance with § 210.27(e).

(2)(i) Notwithstanding paragraph (b)(1) of this section, a digital music provider may satisfy its obligations under 17 U.S.C. 115(d)(4)(B) with respect to a particular sound recording by arranging, or collectively arranging with others, for the mechanical licensing collective to receive the information required by paragraph (b)(1)(i) of this section from an authoritative source of sound recording information, such as the collective designated by the Copyright Royalty Judges to collect and distribute royalties under the statutory licenses established in 17 U.S.C. 112 and 114, provided that:

(A) Such arrangement requires such source to inform, including through periodic updates, the digital music provider and mechanical licensing collective about any relevant gaps in its repertoire coverage known to such source, including but not limited to particular categories of information identified in § 210.27(e)(1)(i)(E) and (e)(1)(ii), sound recording copyright owners and/or other licensors of sound recordings (*e.g.,* labels, distributors), genres, and/or countries of origin, that are either not covered or materially underrepresented as compared to overall market representation; and

(B) Such digital music provider does not have actual knowledge or has not been notified by the source, the mechanical licensing collective, or a copyright owner, licensor, or author (or their respective representatives, including by an administrator or a collective management organization) of the relevant sound recording or musical work that is embodied in such sound recording, that the source lacks such information for the relevant sound recording or a set of sound recordings encompassing such sound recording.

(ii) Satisfying the requirements of 17 U.S.C. 115(d)(4)(B) in the manner set out in paragraph (b)(2)(i) of this section does not excuse a digital music provider from having to report sound recording and musical work information in accordance with § 210.27(e).

(3) The requirements of paragraph (b) of this section are without prejudice to what a court of competent jurisdiction may determine constitutes good-faith, commercially reasonable efforts for purposes of eligibility for the limitation on liability described in 17 U.S.C. 115(d)(10).

(c) *Musical work copyright owners.* (1) Pursuant to 17 U.S.C. 115(d)(3)(E)(iv), each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, by providing, to the extent a musical work copyright owner becomes aware that such information is not then available in the database and to the extent the musical work copyright owner has such missing information, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.

(2) As used in paragraph (c)(1) of this section, ''information regarding the names of the sound recordings'' shall include, for each applicable sound recording:

(i) Sound recording name(s), including any alternative or parenthetical titles for the sound recording;

(ii) Featured artist(s); and

(iii) ISRC(s).

§ 210.27 Reports of usage and payment for blanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage and payment of royalties for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a digital music provider operating under a blanket license pursuant to 17 U.S.C. 115(d). A blanket licensee shall report and pay royalties to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(c)(2)(I), 17 U.S.C. 115(d)(4)(A), and this section. A blanket licensee shall also report to the mechanical licensing collective on an annual basis in accordance with 17 U.S.C. 115(c)(2)(I) and this section. A blanket licensee may make adjustments to its reports of usage and royalty payments in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage,* unless otherwise specified, refers to all reports of usage required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by significant nonblanket licensees under 17 U.S.C. 115(d)(6)(A)(ii) and § 210.28.

(2) A *monthly report of usage* is a report of usage accompanying monthly royalty payments identified in 17 U.S.C. 115(c)(2)(I) and 17 U.S.C. 115(d)(4)(A), and required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license.

(3) An *annual report of usage* is a statement of account identified in 17 U.S.C. 115(c)(2)(I), and required to be delivered by a blanket licensee annually to the mechanical licensing collective under the blanket license.

(4) A *report of adjustment* is a report delivered by a blanket licensee to the mechanical licensing collective under the blanket license adjusting one or

more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a ''Monthly Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the blanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) For any voluntary license or individual download license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(6) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section:

(i) The total royalty payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total royalty payable broken down by each applicable activity or offering including as may be defined in part 385 of this title; and

(ii) The amount of late fees, if applicable, included in the payment associated with the monthly report of usage.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) *Calculations.* (i) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(ii) Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of such royalties under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(2) *Estimates.* (i) Where computation of the royalties payable by the blanket licensee under the blanket license depends on an input that is unable to be finally determined at the time the report of usage is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the blanket licensee's control (*e.g.,* as applicable, the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the blanket licensee. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. A report of usage containing an estimate permitted by this paragraph (d)(2)(i) should identify each input that has been estimated, and provide the reason(s) why such input(s) needed to be estimated and an explanation as to the basis for the estimate(s).

(ii) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, and the blanket licensee is dependent upon the mechanical licensing collective to confirm usage subject to applicable voluntary licenses and individual download licenses, the blanket licensee shall compute the royalties payable by the blanket licensee under the blanket license using a reasonable estimation of the amount of payment for such non-blanket usage to be deducted from royalties that would otherwise be due under the blanket license, determined in accordance with GAAP. Royalty payments based on such estimates shall be adjusted within 5 calendar days after the mechanical licensing collective confirms such amount to be deducted and notifies the blanket licensee under paragraph (g)(2) of this section. Any overpayment of royalties shall be handled in accordance with paragraph (k)(5) of this section. Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the blanket licensee shall not provide an estimate of or deduct such amount in the information delivered to the mechanical licensing collective under paragraph (d)(1)(ii) of this section.

(3) *Good faith.* All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the blanket licensee at the time the report of usage is delivered to the mechanical licensing collective, and subject to any additional accounting and

certification requirements under 17 U.S.C. 115 and this section.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the blanket licensee, including unique identifier(s) (such as, if applicable, Uniform Resource Locators (URLs)) that can be used to locate and listen to the sound recording, accompanied by clear instructions describing how to do so (such audio access may be limited to a preview or sample of the sound recording lasting at least 30 seconds), subject to paragraph (e)(3) of this section;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) ISRC(s);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) UPC(s); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s);

(*9*) Distributor(s); and

(*10*) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the blanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s);

(*2*) Publisher(s) with applicable U.S. rights;

(*3*) Musical work copyright owner(s);

(*4*) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(*5*) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the blanket licensee, or any corporate parent, subsidiary, or affiliate of the blanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Where any of the information called for by paragraph (e)(1) of this section, except for playing time, is acquired by the blanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the blanket licensee revises, re-titles, or otherwise modifies such information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), the blanket licensee shall report as follows:

(i) It shall be sufficient for the blanket licensee to report either the licensor-provided version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, except for the reporting of any information belonging to a category of information that was not periodically modified by that blanket licensee prior to the license availability date, any unique identifier (including but not limited to ISRC and ISWC), or any release date. On and after September 17, 2021, it additionally shall not be sufficient for the blanket licensee to report a modified version of any sound recording name, featured artist, version, or album title.

(ii) Where the blanket licensee must otherwise report the licensor-provided version of such information under paragraph (e)(2)(i) of this section, but to the best of its knowledge, information, and belief no longer has possession, custody, or control of the licensor-provided version, reporting the modified version of such information will satisfy its obligations under paragraph (e)(1) of this section if the blanket licensee certifies to the mechanical licensing collective that to the best of the blanket licensee's knowledge, information, and belief: The information at issue belongs to a category of information called for by paragraph (e)(1) of this section (each of which must be identified) that was periodically modified by the particular blanket licensee prior to October 19, 2020; and that despite engaging in good-faith, commercially reasonable efforts, the blanket licensee has not located the licensor-provided version in its records. A certification need not identify specific sound recordings or musical works, and a single certification may encompass all licensor-provided information satisfying the conditions of the preceding sentence. The blanket licensee should deliver this certification prior to or contemporaneously with the first-delivered report of usage containing information to which this paragraph (e)(2)(ii) is applicable and need not provide the same certification to the mechanical licensing collective more than once.

(3) With respect to the obligation under paragraph (e)(1) of this section for blanket licensees to report unique identifiers that can be used to locate and listen to sound recordings accompanied by clear instructions describing how to do so:

(i) On and after the license availability date, blanket licensees providing such unique identifiers may not impose conditions that materially diminish the degree of access to sound recordings in connection with their potential use by the mechanical licensing collective or its registered users in connection with their use of the collective's claiming portal (*e.g.,* if a paid subscription is not required to listen to a sound recording as of the license availability date, the blanket licensee should not later impose a subscription fee for users to access the recording through the portal). Nothing in this paragraph (e)(3)(i) shall be construed as restricting a blanket licensee from otherwise imposing conditions or diminishing access to sound recordings: With respect to other users or methods of access to its service(s), including the general public; if required by a relevant agreement with a sound recording copyright owner or other licensor of sound recordings; or where such sound recordings are no longer made available through its service(s).

(ii) Blanket licensees who do not assign such unique identifiers as of September 17, 2020, may make use of a transition period ending September 17, 2021, during which the requirement to

report such unique identifiers accompanied by instructions shall be waived upon notification, including a description of any implementation obstacles, to the mechanical licensing collective.

(iii)(A) By no later than December 16, 2020, and on a quarterly basis for the succeeding year, or as otherwise directed by the Copyright Office, the mechanical licensing collective and digital licensee coordinator shall report to the Copyright Office regarding the ability of users to listen to sound recordings for identification purposes through the collective's claiming portal. In addition to any other information requested, each report shall:

(*1*) Identify any implementation obstacles preventing the audio of any reported sound recording from being accessed directly or indirectly through the portal without cost to portal users (including any obstacles described by any blanket licensee pursuant to paragraph (e)(3)(ii) of this section, along with such licensee's identity), and any other obstacles to improving the experience of portal users seeking to identify musical works and their owners;

(*2*) Identify an implementation strategy for addressing any identified obstacles, and, as applicable, what progress has been made in addressing such obstacles; and

(*3*) Identify any agreements between the mechanical licensing collective and blanket licensee(s) to provide for access to the relevant sound recordings for portal users seeking to identify musical works and their owners through an alternate method rather than by reporting unique identifiers through reports of usage (*e.g.,* separately licensed solutions). If such an alternate method is implemented pursuant to any such agreement, the requirement to report unique identifiers that can be used to locate and listen to sound recordings accompanied by clear instructions describing how to do so is lifted for the relevant blanket licensee(s) for the duration of the agreement.

(B) The mechanical licensing collective and digital licensee coordinator shall cooperate in good faith to produce the reports required under paragraph (e)(3)(iii)(A) of this section, and shall submit joint reports with respect to areas on which they can reach substantial agreement, but which may contain separate report sections on areas where they are unable to reach substantial agreement. Such cooperation may include work through the operations advisory committee.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the blanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a blanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.

(5) A blanket licensee may make use of a transition period ending September 17, 2021, during which the blanket licensee need not report information that would otherwise be required by paragraph (e)(1)(i)(E) or (e)(1)(ii) of this section, unless:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) It belongs to a category of information that is reported by the particular blanket licensee pursuant to any voluntary license or individual download license; or

(iii) It belongs to a category of information that was periodically reported by the particular blanket licensee prior to the license availability date.

(f) *Content of annual reports of usage.* An annual report of usage, covering the full fiscal year of the blanket licensee, shall be clearly and prominently identified as an ''Annual Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The fiscal year covered by the annual report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) The following information, cumulative for the applicable annual reporting period, for each month for each applicable activity or offering including as may be defined in part 385 of this title, and broken down by month and by each such applicable activity or offering:

(i) The total royalty payable by the blanket licensee under the blanket license, computed in accordance with the requirements of this section and part 385 of this title.

(ii) The total sum paid to the mechanical licensing collective under the blanket license, including the amount of any adjustment delivered contemporaneously with the annual report of usage.

(iii) The total adjustment(s) made by any report of adjustment adjusting any monthly report of usage covered by the applicable annual reporting period, including any adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section.

(iv) The total number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each sound recording used, whether pursuant to a blanket license, voluntary license, or individual download license.

(v) To the extent applicable to the calculation of royalties owed by the blanket licensee under the blanket license:

(A) Total service provider revenue, as may be defined in part 385 of this title.

(B) Total costs of content, as may be defined in part 385 of this title.

(C) Total deductions of performance royalties, as may be defined in and permitted by part 385 of this title.

(D) Total subscribers, as may be defined in part 385 of this title.

(5) The amount of late fees, if applicable, included in any payment associated with the annual report of usage.

(g) *Processing and timing.* (1) Each monthly report of usage and related royalty payment must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period. Where a monthly report of usage satisfying the requirements of 17 U.S.C. 115 and this section is delivered to the mechanical licensing collective no later than 15 calendar days after the end of the applicable monthly reporting period, the mechanical licensing collective shall deliver an invoice to the blanket licensee no later than 40 calendar days after the end of the applicable monthly reporting period that sets forth the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, which shall be broken down by each applicable activity or

offering including as may be defined in part 385 of this title.

(2) After receiving a monthly report of usage, the mechanical licensing collective shall engage in the following actions, among any other actions required of it:

(i) The mechanical licensing collective shall engage in efforts to identify the musical works embodied in sound recordings reflected in such report, and the copyright owners of such musical works (and shares thereof).

(ii) The mechanical licensing collective shall engage in efforts to confirm uses of musical works subject to voluntary licenses and individual download licenses, and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license.

(iii) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to confirm proper payment of the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(iv) Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(v) The mechanical licensing collective shall deliver a response file to the blanket licensee if requested by the blanket licensee, and the blanket licensee may request an invoice even if not entitled to an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section. Such requests may be made in connection with a particular monthly report of usage or via a one-time request that applies to future reporting periods. Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file to the blanket licensee contemporaneously with such invoice. The mechanical licensing collective shall otherwise deliver the response file and/or invoice, as applicable, to the blanket licensee in a reasonably timely manner, but no later than 70 calendar days after the end of the applicable monthly reporting period if the blanket licensee has delivered its monthly report of usage and related royalty payment no later than 45 calendar days after the end of the applicable monthly reporting period. In all cases, the response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators, and shall include the results of the process described in paragraphs (g)(2)(i) through (iv) of this section on a track-by-track and ownership-share basis, with updates to reflect any new results from the previous month. Response files shall include the following minimum information: song title, mechanical licensing collective-assigned song code, composer(s), publisher name, including top publisher, original publisher, and admin publisher, publisher split, mechanical licensing collective-assigned publisher number, publisher/license status (whether each work share is subject to the blanket license or a voluntary license or individual download license), royalties per work share, effective per-play rate, time-adjusted plays, and the unique identifier for each applicable voluntary license or individual download license provided to the mechanical licensing collective pursuant to § 210.24(b)(8)(vi).

(3) Each annual report of usage and, if any, related royalty payment must be delivered to the mechanical licensing collective no later than the 20th day of the sixth month following the end of the fiscal year covered by the annual report of usage.

(4) The required timing for any report of adjustment and, if any, related royalty payment shall be as follows:

(i) Where a report of adjustment adjusting a monthly report of usage is not combined with an annual report of usage, as described in paragraph (k)(1) of this section, a report of adjustment adjusting a monthly report of usage must be delivered to the mechanical licensing collective after delivery of the monthly report of usage being adjusted and before delivery of the annual report of usage for the annual period covering such monthly report of usage.

(ii) A report of adjustment adjusting an annual report of usage must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same annual report of usage at different points in time, a separate 6-month period runs for each such triggering event.

(h) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among blanket licensees. The mechanical licensing collective must offer at least two options, where one is dedicated to smaller blanket licensees that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger blanket licensees with more sophisticated operations. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than two reporting or data standards or formats.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A report of usage and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of usage to the payment.

(3) The mechanical licensing collective may modify the requirements it adopts under paragraphs (h)(1) and (2) of this section at any time, after good-faith consultation with the operations advisory committee and taking into consideration any technological and cost burdens that may reasonably be expected to result and the proportionality of those burdens to any reasonably expected benefits, provided that advance notice of any such change is reflected on its website and delivered to blanket licensees using the contact information provided in each respective licensee's notice of license. A blanket licensee shall not be required to comply with any such change before the first reporting period ending at least 30 calendar days after delivery of such notice, unless such change is a

significant change, in which case, compliance shall not be required before the first reporting period ending at least one year after delivery of such notice. For purposes of this paragraph (h)(3), a *significant change* occurs where the mechanical licensing collective changes any policy requiring information to be provided under particular reporting or data standards or formats. Where delivery of the notice required by this paragraph (h)(3) is attempted but unsuccessful because the contact information in the blanket licensee's notice of license is not current, the grace periods established by this paragraph (h)(3) shall begin to run from the date of attempted delivery. Nothing in this paragraph (h)(3) empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(4) The mechanical licensing collective shall, by no later than the license availability date, establish an appropriate process by which any blanket licensee may voluntarily make advance deposits of funds with the mechanical licensing collective against which future royalty payments may be charged.

(5) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities. An annual report of usage shall be delivered for each fiscal year during which at least one monthly report of usage was required to have been delivered. An annual report of usage does not replace any monthly report of usage.

(6)(i) Where a blanket licensee attempts to timely deliver a report of usage and/or related royalty payment to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the blanket licensee knew or should have known at the time, if the blanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage and/or related royalty payment to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then the mechanical licensing collective shall act as follows:

(A) The mechanical licensing collective shall fully credit the blanket licensee for any applicable late fee paid by the blanket licensee as a result of the untimely delivery of the report of usage and/or related royalty payment.

(B) The mechanical licensing collective shall not use the untimely delivery of the report of usage and/or related royalty payment as a basis to terminate the blanket licensee's blanket license.

(ii) In the event of a good-faith dispute regarding whether a blanket licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the mechanical licensing collective's applicable information technology systems, a blanket licensee that complies with the requirements of paragraph (h)(6)(i) of this section within a reasonable period of time shall receive the protections of paragraphs (h)(6)(i)(A) and (B) of this section.

(7) The mechanical licensing collective shall provide a blanket licensee with written confirmation of receipt no later than 2 business days after receiving a report of usage and no later than 2 business days after receiving any payment.

(i) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have examined this monthly report of usage, and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have prepared or supervised the preparation of the data used by the blanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the blanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that (A) the processes generated monthly reports of usage that accurately reflect, in all material respects, the blanket licensee's usage of musical works, the statutory royalties applicable thereto (to the extent reported), and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations, and (B) the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(6) A certification that the blanket licensee has, for the period covered by the monthly report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(j) *Certification of annual reports of usage.* (1) Each annual report of usage shall be accompanied by:

(i) The name of the person who is signing the annual report of usage on behalf of the blanket licensee.

(ii) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature.

(iv) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person signing the annual report of usage.

(v) The following statement: I am duly authorized to sign this annual report of usage on behalf of the blanket licensee.

(vi) A certification that the blanket licensee has, for the period covered by the annual report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(2) Each annual report of usage shall also be certified by a licensed certified public accountant. Such certification shall comply with the following requirements:

(i) Except as provided in paragraph (j)(2)(ii) of this section, the accountant shall certify that it has conducted an

examination of the annual report of usage prepared by the blanket licensee in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and has rendered an opinion based on such examination that the annual report of usage conforms with the standards in paragraph (j)(2)(iv) of this section.

(ii) If such accountant determines in its professional judgment that the volume of data attributable to a particular blanket licensee renders it impracticable to certify the annual report of usage as required by paragraph (j)(2)(i) of this section, the accountant may instead certify the following:

(A) That the accountant has conducted an examination in accordance with the attestation standards established by the American Institute of Certified Public Accountants of the following assertions by the blanket licensee's management:

(*1*) That the processes used by or on behalf of the blanket licensee generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section; and

(*2*) That the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(B) That such examination included examining, either on a test basis or otherwise as the accountant considered necessary under the circumstances and in its professional judgment, evidence supporting the management assertions in paragraph (j)(2)(ii)(A) of this section, and performing such other procedures as the accountant considered necessary in the circumstances.

(C) That the accountant has rendered an opinion based on such examination that the processes used to generate the annual report of usage generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section, and that the internal controls relevant to the processes used to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(iii) In the event a third party or third parties acting on behalf of the blanket licensee provided services related to the annual report of usage, the accountant making a certification under either paragraph (j)(2)(i) or (ii) of this section may, as the accountant considers necessary under the circumstances and in its professional judgment, rely on a report and opinion rendered by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants that the processes and/or internal controls of the third party or third parties relevant to the generation of the blanket licensee's annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage, if such reliance is disclosed in the certification.

(iv) An annual report of usage conforms with the standards of this paragraph (j) if it presents fairly, in all material respects, the blanket licensee's usage of musical works in covered activities during the period covered by the annual report of usage, the statutory royalties applicable thereto (to the extent reported), and such other data as are relevant to the calculation of statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(v) Each certificate shall be signed by an individual, or in the name of a partnership or a professional corporation with two or more shareholders. The certificate number and jurisdiction are not required if the certificate is signed in the name of a partnership or a professional corporation with two or more shareholders.

(3) If the annual report of usage is delivered electronically, the blanket licensee may deliver an electronic facsimile of the original certification of the annual report of usage signed by the licensed certified public accountant. The blanket licensee shall retain the original certification of the annual report of usage signed by the licensed certified public accountant for the period identified in paragraph (m) of this section, which shall be made available to the mechanical licensing collective upon demand.

(k) *Adjustments.* (1) A blanket licensee may adjust one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, by delivering to the mechanical licensing collective a report of adjustment. A report of adjustment adjusting one or more monthly reports of usage may, but need not, be combined with the annual report of usage for the annual period covering such monthly reports of usage and related payments. In such cases, such an annual report of usage shall also be considered a report of adjustment, and must satisfy the requirements of both paragraphs (f) and (k) of this section.

(2) A report of adjustment, except when combined with an annual report of usage, shall be clearly and prominently identified as a ''Report of Adjustment Under Compulsory Blanket License for Making and Distributing Phonorecords.'' A report of adjustment that is combined with an annual report of usage shall be identified in the same manner as any other annual report of usage.

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly reports of usage or annual reports of usage, including a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the blanket licensee under the blanket license depends. Such description shall include all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the adjusted royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of the adjustment under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2)(i) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the blanket licensee shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the report of adjustment or promptly after being notified by the mechanical licensing collective of the amount due. A report of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the blanket licensee's account, or upon request, issue a refund within a reasonable period of time.

(6) A report of adjustment adjusting an annual report of usage may only be made:

(i) In exceptional circumstances;

(ii) When making an adjustment to a previously estimated input under paragraph (d)(2)(i) of this section;

(iii) Following an audit under 17 U.S.C. 115(d)(4)(D);

(iv) Following any other audit of a blanket licensee that concludes after the annual report of usage is delivered and that has the result of affecting the computation of the royalties payable by the blanket licensee under the blanket license (*e.g.,* as applicable, an audit by a sound recording copyright owner concerning the amount of applicable consideration paid for sound recording copyright rights); or

(v) In response to a change in applicable rates or terms under part 385 of this title.

(7) A report of adjustment adjusting a monthly report of usage must be certified in the same manner as a monthly report of usage under paragraph (i) of this section. A report of adjustment adjusting an annual report of usage must be certified in the same manner as an annual report of usage under paragraph (j) of this section, except that the examination by a certified public accountant under paragraph (j)(2) of this section may be limited to the adjusted material and related recalculation of royalties payable. Where a report of adjustment is combined with an annual report of usage, its content shall be subject to the certification covering the annual report of usage with which it is combined.

(l) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation of facts or information contained in other documents or records.

(m) *Documentation and records of use.* (1) Each blanket licensee shall, for a period of at least seven years from the date of delivery of a report of usage to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such report of usage (except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the report of usage containing the final adjustment of such input), including but not limited to the following:

(i) Records and documents accounting for digital phonorecord deliveries that do not constitute plays, constructive plays, or other payable units.

(ii) Records and documents pertaining to any promotional or free trial uses that are required to be maintained under applicable provisions of part 385 of this title.

(iii) Records and documents identifying or describing each of the blanket licensee's applicable activities or offerings including as may be defined in part 385 of this title, including information sufficient to reasonably demonstrate whether the activity or offering qualifies as any particular activity or offering for which specific rates and terms have been established in part 385 of this title, and which specific rates and terms apply to such activity or offering.

(iv) Records and documents with information sufficient to reasonably demonstrate, if applicable, whether service revenue and total cost of content, as those terms may be defined in part 385 of this title, are properly calculated in accordance with part 385 of this title.

(v) Records and documents with information sufficient to reasonably demonstrate whether and how any royalty floor established in part 385 of this title does or does not apply.

(vi) Records and documents containing such other information as is necessary to reasonably support and confirm all usage and calculations (including of any inputs provided to the mechanical licensing collective to enable further calculations) contained in the report of usage, including but not limited to, as applicable, relevant information concerning subscriptions, devices and platforms, discount plans (including how eligibility was assessed), bundled offerings (including their constituent components and pricing information), and numbers of end users and subscribers (including unadjusted numbers and numbers adjusted as may be permitted by part 385 of this title).

(vii) Any other records or documents that may be appropriately examined pursuant to an audit under 17 U.S.C. 115(d)(4)(D).

(2) The mechanical licensing collective or its agent shall be entitled to reasonable access to records and documents described in paragraph (m)(1) of this section, which shall be provided promptly and arranged for no later than 30 calendar days after the mechanical licensing collective's reasonable request, subject to any confidentiality to which they may be entitled. The mechanical licensing collective shall be entitled to make one request per quarter covering a period of up to one quarter in the aggregate. With respect to the total cost of content, as that term may be defined in part 385 of this title, the access permitted by this paragraph (m)(2) shall be limited to accessing the aggregated figure kept by the blanket licensee on its books for the relevant reporting period(s). Neither the mechanical licensing collective nor its agent shall be entitled to access any records or documents retained solely pursuant to paragraph (m)(1)(vii) of this section outside of an applicable audit. Each report of usage must include clear instructions on how to request access to records and documents under this paragraph (m).

(3) Each blanket licensee shall, in accordance with paragraph (m)(4) of this section, keep and retain in its possession and report the following information:

(i) With respect to each sound recording, that embodies a musical work, first licensed or obtained for use in covered activities by the blanket licensee on or after the effective date of its blanket license:

(A) Each of the following dates to the extent reasonably available:

(*1*) The date on which the sound recording was first reproduced by the blanket licensee on its server (''server fixation date'').

(*2*) The date on which the sound recording was first released on the blanket licensee's service (''street date'').

(B) If neither of the dates specified in paragraph (m)(3)(i)(A) of this section is reasonably available, the date that, in the assessment of the blanket licensee, provides a reasonable estimate of the date the sound recording was first distributed on its service within the United States (''estimated first distribution date'').

(ii) A record of materially all sound recordings embodying musical works in its database or similar electronic system as of a time reasonably approximate to the effective date of its blanket license. For each recording, the record shall include the sound recording name(s), featured artist(s), unique identifier(s) assigned by the blanket licensee, actual playing time, and, to the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, ISRC(s). The blanket licensee shall use commercially reasonable efforts to make this record as accurate and complete as reasonably possible in

representing the blanket licensee's repertoire as of immediately prior to the effective date of its blanket license.

(4)(i) Each blanket licensee must deliver the information described in paragraph (m)(3)(i) of this section to the mechanical licensing collective at least annually and keep and retain this information until delivered. Such reporting must include the following:

(A) For each sound recording, the same categories of information described in paragraph (m)(3)(ii) of this section.

(B) For each date, an identification of which type of date it is (*i.e.,* server fixation date, street date, or estimated first distribution date).

(ii) A blanket licensee must deliver the information described in paragraph (m)(3)(ii) of this section to the mechanical licensing collective as soon as commercially reasonable, and no later than contemporaneously with its first reporting under paragraph (m)(4)(i) of this section.

(iii) Prior to being delivered to the mechanical licensing collective, the collective or its agent shall be entitled to reasonable access to the information kept and retained pursuant to paragraphs (m)(4)(i) and (ii) of this section if needed in connection with applicable directions, instructions, or orders concerning the distribution of royalties.

(5) Nothing in paragraph (m)(3) or (4) of this section, nor the collection, maintenance, or delivery of information under paragraphs (m)(3) and (4) of this section, nor the information itself, shall be interpreted or construed:

(i) To alter, limit, or diminish in any way the ability of an author or any other person entitled to exercise rights of termination under section 203 or 304 of title 17 of the United States Code from fully exercising or benefiting from such rights;

(ii) As determinative of the date of the license grant with respect to works as it pertains to sections 203 and 304 of title 17 of the United States Code; or

(iii) To affect in any way the scope or effectiveness of the exercise of termination rights, including as pertaining to derivative works, under section 203 or 304 of title 17 of the United States Code.

(n) *Voluntary agreements with mechanical licensing collective to alter process.* (1) Subject to the provisions of 17 U.S.C. 115, a blanket licensee and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraphs (i) and (j) of this section may not be altered by agreement. This paragraph (n)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (n)(1) of this section that includes the name of the blanket licensee (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the blanket licensee engages in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (n)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

§ 210.28 Reports of usage for significant nonblanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a significant nonblanket licensee pursuant to 17 U.S.C. 115(d)(6)(A)(ii). A significant nonblanket licensee shall report to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(d)(6)(A)(ii) and this section. A significant nonblanket licensee may make adjustments to its reports of usage in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage,* unless otherwise specified, refers to all reports of usage required to be delivered by a significant nonblanket licensee to the mechanical licensing collective, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by blanket licensees under 17 U.S.C. 115(d)(4)(A) and § 210.27.

(2) A *monthly report of usage* is a report of usage identified in 17 U.S.C. 115(d)(6)(A)(ii), and required to be delivered by a significant nonblanket licensee to the mechanical licensing collective.

(3) A *report of adjustment* is a report delivered by a significant nonblanket licensee to the mechanical licensing collective adjusting one or more previously delivered monthly reports of usage.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a ''Significant Nonblanket Licensee Monthly Report of Usage for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities. If the significant nonblanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the significant nonblanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) For each voluntary license and individual download license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that

the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) The mechanical royalties payable by the significant nonblanket licensee for the applicable monthly reporting period for engaging in covered activities pursuant to each applicable voluntary license and individual download license.

(2) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the significant nonblanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the significant nonblanket licensee's public-facing service;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the significant nonblanket licensee in connection with its use of sound recordings of musical works to engage in covered activities:

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) ISRC(s);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) UPC(s); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s);

(*9*) Distributor(s); and

(*10*) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the significant nonblanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s);

(*2*) Publisher(s) with applicable U.S. rights;

(*3*) Musical work copyright owner(s);

(*4*) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(*5*) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the significant nonblanket licensee, or any corporate parent, subsidiary, or affiliate of the significant nonblanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Where any of the information called for by paragraph (e)(1) of this section, except for playing time, is acquired by the significant nonblanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the significant nonblanket licensee revises, re-titles, or otherwise modifies such information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), the significant nonblanket licensee shall report as follows:

(i) It shall be sufficient for the significant nonblanket licensee to report either the licensor-provided version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, except that it shall not be sufficient for the significant nonblanket licensee to report a modified version of any information belonging to a category of information that was not periodically modified by that significant nonblanket licensee prior to the license availability date, any unique identifier (including but not limited to ISRC and ISWC), or any release date.

(ii) Where the significant nonblanket licensee must otherwise report the licensor-provided version of such information under paragraph (e)(2)(i) of this section, but to the best of its knowledge, information, and belief no longer has possession, custody, or control of the licensor-provided version, reporting the modified version of such information will satisfy its obligations under paragraph (e)(1) of this section if the significant nonblanket licensee certifies to the mechanical licensing collective that to the best of the significant nonblanket licensee's knowledge, information, and belief: The information at issue belongs to a category of information called for by paragraph (e)(1) of this section (each of which must be identified) that was periodically modified by the particular significant nonblanket licensee prior to October 19, 2020; and that despite engaging in good-faith, commercially reasonable efforts, the significant nonblanket licensee has not located the licensor-provided version in its records. A certification need not identify specific sound recordings or musical works, and a single certification may encompass all licensor-provided information satisfying the conditions of the preceding sentence. The significant nonblanket licensee should deliver this certification prior to or contemporaneously with the first-delivered report of usage containing information to which this paragraph (e)(2)(ii) is applicable and need not provide the same certification to the mechanical licensing collective more than once.

(3) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the significant nonblanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a significant nonblanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.

(4) A significant nonblanket licensee may make use of a transition period ending September 17, 2021, during which the significant nonblanket licensee need not report information that would otherwise be required by paragraph (e)(1)(i)(E) or (e)(1)(ii) of this section, unless:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) It belongs to a category of information that is reported by the particular significant nonblanket licensee pursuant to any voluntary license or individual download license; or

(iii) It belongs to a category of information that was periodically reported by the particular significant nonblanket licensee prior to the license availability date.

(f) *Timing.* (1) An initial report of usage must be delivered to the mechanical licensing collective contemporaneously with the significant nonblanket licensee's notice of nonblanket activity. Each subsequent monthly report of usage must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period.

(2) A report of adjustment may only be delivered to the mechanical licensing collective once annually, between the end of the significant nonblanket licensee's fiscal year and 6 months after the end of its fiscal year. Such report may only adjust one or more previously delivered monthly reports of usage from the applicable fiscal year.

(g) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in any format accepted by the mechanical licensing collective for blanket licensees under § 210.27(h). With respect to any modifications to formatting requirements that the mechanical licensing collective adopts, the mechanical licensing collective shall follow the consultation process as under § 210.27(h), and significant nonblanket licensees shall be entitled to the same advance notice and grace periods as apply to blanket licensees under § 210.27(h), except the mechanical licensing collective shall use the contact information provided in each respective significant nonblanket licensee's notice of nonblanket activity. Nothing in this paragraph (g)(1) empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(2) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities.

(3) Where a significant nonblanket licensee attempts to timely deliver a report of usage to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the significant nonblanket licensee knew or should have known at the time, if the significant nonblanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). In the event of a good-faith dispute regarding whether a significant nonblanket licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the mechanical licensing collective's applicable information technology systems, neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C) as long as the significant nonblanket licensee complies with the requirements of this paragraph (g)(3) within a reasonable period of time.

(4) The mechanical licensing collective shall provide a significant nonblanket licensee with written confirmation of receipt no later than 2 business days after receiving a report of usage.

(h) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a significant nonblanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the significant nonblanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have examined this monthly report of usage, and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have prepared or supervised the preparation of the data used by the significant nonblanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the significant nonblanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that (A) the processes generated monthly reports of usage that accurately reflect, in all material respects, the significant nonblanket licensee's usage of musical works and the royalties applicable thereto, and (B) the internal controls relevant to the processes used by or on behalf of the significant nonblanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(i) *Adjustments.* (1) A significant nonblanket licensee may adjust one or more previously delivered monthly reports of usage by delivering to the mechanical licensing collective a report of adjustment.

(2) A report of adjustment shall be clearly and prominently identified as a ''Significant Nonblanket Licensee Report of Adjustment for Making and Distributing Phonorecords.''

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly report(s) of usage to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly report(s) of usage.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) A report of adjustment must be certified in the same manner as a monthly report of usage under paragraph (h) of this section.

(j) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation of facts or information contained in other documents or records.

(k) *Harmless errors.* Errors in the delivery or content of a report of usage that do not materially affect the adequacy of the information required to serve the purpose of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the report invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (k) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(l) *Voluntary agreements with mechanical licensing collective to alter process.* (1) Subject to the provisions of 17 U.S.C. 115, a significant nonblanket licensee and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraph (h) of this section may not be altered by agreement. This paragraph (l)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (l)(1) of this section that includes the name of the significant nonblanket licensee (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (l)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

Dated: September 3, 2020.

Maria Strong,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–20077 Filed 9–16–20; 8:45 am]

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Copyright Office

37 CFR Part 210

Reporting and Distribution of Royalties to Copyright Owners by the Mechanical Licensing Collective; Interim Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2020–6]

Reporting and Distribution of Royalties to Copyright Owners by the Mechanical Licensing Collective

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The U.S. Copyright Office is issuing an interim rule regarding the obligations of the mechanical licensing collective to report and distribute royalties paid by digital music providers under the blanket license to musical work copyright owners under title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. After soliciting public comments through a notice of proposed rulemaking, the Office is now issuing regulations establishing the timing, form, and delivery of statements accompanying royalty distributions to musical work copyright owners. These regulations concern only royalty statements and distributions regarding matched uses of musical works embodied in sound recordings and do not address issues related to the distribution of unclaimed, accrued royalties.

DATES: Effective October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov* or Terry Hart, Assistant General Counsel, by email at *tehart@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Title I of the Music Modernization Act (''MMA''), the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works available under 17 U.S.C. 115. Prior to the MMA, a compulsory license was obtained by licensees on a per-work, song-by-song basis, and required a licensee to serve a notice of intention to obtain a compulsory license on the relevant copyright owner (or file the notice of intention with the Copyright Office if the Office's public records did not identify the copyright owner and include an address at which notice could be served) and then pay applicable royalties accompanied by accounting statements.[1]

The MMA amends this regime in multiple ways, most significantly by establishing a new blanket compulsory license that digital music providers (''DMPs'') may obtain to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams.[2] Instead of licensing one song at a time by serving notices of intention on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (''MLC''), which has been designated by the Register of Copyrights.[3] Under the MMA, compulsory licensing of phonorecords that are not DPDs (*e.g.,* CDs, vinyl, tapes, and other types of physical phonorecords) (the ''non-blanket license'') continues to operate on a per-work, song-by-song basis, the same as before.[4]

On September 24, 2019, the Copyright Office issued a notification of inquiry (''NOI'') to initiate this current proceeding regarding implementing regulations for the blanket license.[5] The Office invited public comment on regulations that the MMA specifically directs it to adopt, as well as additional regulations that may be necessary or appropriate to effectuate the new blanket licensing structure. Among the issues the notification sought comment on was ''the MLC's payment and reporting obligations with respect to royalties that have been matched to copyright owners, both for works that are matched at the time the MLC receives payment from digital music providers and works that are matched later during the statutorily prescribed holding period for unmatched works.''[6] On April 22, 2020, the Office issued a notice of proposed rulemaking (''NPRM'') soliciting public comments on proposed regulations regarding those obligations.[7] The Office received comments from seven parties in response to the NPRM and engaged in follow-up discussions with interested parties pursuant to its *ex parte* guidelines, as discussed further below.

Commenters largely agreed that the NPRM generally struck the appropriate balance. The MLC said it ''appreciates the Office's consideration of the unprecedented licensing regime that the MLC is responsible to implement from scratch, and finds that the NPRM does an excellent job empowering the MLC to carry out the functions that it was designated to fulfill.''[8] The Future of Music Coalition (''FMC'') said it ''continues to appreciate the Office's ongoing efforts to implement the Music Modernization Act in ways that accord with legislative intent, that demonstrate ongoing concern for fairness to all parties, that increase transparency, and that harmonize the public interest with the interests of creators, including songwriters and composers.''[9] Music Reports said it ''enthusiastically endorses the overall framework and degree of balance generally achieved throughout.''[10]

Having carefully considered the comments and other record materials in this proceeding, the Office now issues an interim rule that overall closely follows the NPRM, but with a number of modifications based upon public comment. Most significantly, the interim rule clarifies the MLC's timing and delivery obligations with respect to royalty distributions, adjusts the MLC's

[1] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, Copyright and the Music Marketplace 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[2] 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket license and the new mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

[3] 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

[4] 17 U.S.C. 115(b)(1); *see* H.R. Rep. No. 115–651, at 3 (noting ''[t]his is the historical method by which record labels have obtained compulsory licenses''); S. Rep. No. 115–339, at 3 (same); *see also* U.S. Copyright Office, Orrin G. Hatch-Bob Goodlatte Music Modernization Act, *https://www.copyright.gov/music-modernization/* (last visited Sept. 1, 2020).

[5] 84 FR 49966 (Sept. 24, 2019).

[6] *Id.* at 49972.

[7] 85 FR 22549 (Apr. 22, 2020). On the same day, the Office issued two other notices of proposed rulemaking and a notification of inquiry regarding separate MMA implementation issues. 85 FR 22518 (Apr. 22, 2020); 85 FR 22559 (Apr. 22, 2020); 85 FR 22568 (Apr. 22, 2020). All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/*. Specifically, comments received in response to the NOI are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001* and comments received in response to the NPRM are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=COLC-2018-0008.* Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* References to these comments are by party name (abbreviated where appropriate), followed by ''Initial NOI Comment,'' ''Reply NOI Comment,'' ''NPRM Comment,'' or ''*Ex Parte* Letter,'' as appropriate.

[8] MLC NPRM Comment at 1.

[9] FMC NPRM Comment at 1.

[10] Music Reports NPRM Comment at 2.

certification requirement, and explicitly provides for an annual statement to copyright owners. Additional modifications are made regarding the timing of adjustments, the content of royalty statements, and the minimum payment threshold.

In drafting this interim rule, the Office has been mindful of both its longstanding goals of promulgating practical regulations that result in prompt payment to copyright owners [11] and the need to balance the principles identified in the NPRM: Establishing a minimum floor of transparency and accountability that songwriters and publishers can expect of the MLC and avoiding over-regulation by ensuring the MLC retains sufficient flexibility to ably implement a complex and challenging licensing regime.[12] The success of the blanket license is dependent both on the ability of the MLC to administer the license fairly, transparently, and efficiently, and on the confidence songwriters and music publishers (and, for separate aspects, DMPs) have in the process. Copyright Office regulations are an important mechanism for ensuring transparency and accountability in the blanket licensing regime,[13] but they are not the sole mechanism; other provisions in the statute as well as the governance of the MLC itself provides incentive for it to be responsive to the needs of copyright owners.[14]

The Office has determined that it is prudent to promulgate this rule on an interim basis so that it retains some flexibility for responding to unforeseen complications in royalty reporting once the MLC begins distributing royalties. As noticed in the NPRM, adopting the rule on an interim basis is intended to ''facilitate adjustment on topics noticed in this rulemaking if necessary once the MLC begins issuing royalty statements to copyright owners.'' [15] Multiple commenters supported that proposal, and none opposed an interim rule.[16]

II. Interim Rule

The NPRM addressed the information that the MLC is required to report in royalty statements, as well as the format and delivery of such statements and related distribution payments. The interim rule is intended to balance the primary concerns of copyright owners in getting prompt and accurate royalty payments with the operational realities of the MLC in administering the blanket license. The Office has looked to the existing song-by-song compulsory license as a baseline for the level of information that copyright owners expect under the blanket license, as well as the standard for accuracy in royalty reporting, while bearing in mind any relevant shortcomings of the song-by-song licensing regime that motivated passage of the MMA.

Timing and distribution of royalties and royalty statements. The MLC commented that the proposed requirement to report newly reported royalties, newly matched royalties, and adjustments simultaneously ''would cause needless operational complexity and reporting delays to copyright owners.'' [17] The Office's intent in proposing concurrent reporting was to ''minimize and simplify administration for both the MLC and copyright owners.'' [18] Given the MLC's response that concurrent reporting would instead make administration more difficult, the Office has adopted the MLC's proposed language clarifying that while royalties in either case must be reported monthly, there is no requirement that the reports are made simultaneously.

The Office made further updates related to the timing and delivery of royalty statements in light of the public comments. The interim rule has removed the phrase ''for the month next preceding'' in the provision for distribution of royalties based on comments by SoundExchange and supported by the MLC, emphasizing the practical difficulties in meeting this requirement.[19] The aim of that language, carried over from the statutory requirements for the song-by-song licensing framework,[20] was to indicate that the MLC would distribute all royalties that have become payable since the prior monthly distribution, but the MLC and SoundExchange suggested this language was ambiguous.[21] In addition, the Office considered several comments that suggested adding an additional timing requirement and offered various periods, triggers, and exceptions upon which to base this requirement.[22] For its part, the MLC opposed adding a further requirement that obligated the distribution of royalties within a certain period beyond establishing a monthly cadence for reporting, calling it ''overly prescriptive.'' [23] It explained that it ''already has a substantial interest in ensuring royalties are timely reported and distributed in the most efficient manner possible.'' [24] It added that its royalty processing activities will ''depend heavily on the quality and timeliness of DMP usage reporting to the MLC'' and sought to avoid regulatory language that would connect the MLC's reporting obligations to external dependencies, such as the receipt of

[11] 45 FR 79038, 79039 (Nov. 28, 1980).

[12] 85 FR at 22551–52; S. Rep. No. 115–339, at 15 (''[T]he Register is expected to promulgate the necessary regulations required by the legislation in a manner that balances the need to protect the public's interest with the need to let the new collective operate without over-regulation.'').

[13] 17 U.S.C. 115(d)(3)(B)(ii) (instructing the Register of Copyrights to periodically review designation of mechanical licensing collective); S. Rep. No. 115–339 at 5 (''[T]he failure to follow the relevant regulations adopted by the Copyright Office [ ] over the prior five years should raise serious concerns within the Copyright Office as to whether that same entity has the administrative capabilities necessary to perform the required functions of the collective.''); H.R. Rep. No. 115–651, at 6 (same).

[14] *See, e.g.,* 85 FR at 22554 (''[S]ignificant nonregulatory incentives are . . . in place to ensure timely distribution of royalties. For one, the MLC represented in its designation proposal that it intends to provide prompt, complete, and accurate payments to all copyright owners. In addition, because the MLC is governed by the very copyright owners that it will be serving, and because it must maintain the support of copyright owners, it shares their interest in prompt reporting and distribution (internal quotation marks omitted).''); 17 U.S.C. 115(d)(3)(D)(vii) (annual report requirement for MLC); *see also* MLC NPRM Comment at 2–3 (''The MLC has a clear interest in ensuring accurate, transparent and timely reporting to the songwriters and music publishers who govern it and to whom it is accountable.''); SoundExchange NPRM Comment at 2–3 (similar).

[15] 85 FR at 22552.

[16] *See, e.g.,* Music Reports NPRM Comment at 3 (''[I]t would be beneficial for the Office to adopt the proposed rule on an interim basis due to the intricacies of the subject matter and the further issues likely to arise during the MLC's first full year of operation following the blanket license availability date.''); The International Confederation of Societies of Authors and Composers (''CISAC'') & The International Organisation representing Mechanical Rights Societies (''BIEM'') NPRM Comment at 5 (saying it is ''advisable to enable the Copyright Office to conduct an assessment of the Proposed Rulemaking after a one-year period once the MLC has started to operate and to further consult with stakeholders in order to adjust, if necessary, the relevant Regulation.'').

[17] MLC NPRM Comment at 5.

[18] 85 FR at 22553.

[19] SoundExchange NPRM Comment at 5 (''This particular formulation may go too far given the practicalities of royalty collection and distribution'').

[20] 17 U.S.C. 115(c)(2)(I).

[21] While the Office agrees with SoundExchange that the monthly distributions should include any interest that has accrued pursuant to section 115(d)(3)(G)(i)(III), it believes the rule is already clear that such interest is to be included with the payment, as indicated in § 210.29(c)(4)(iv) of the interim rule. *See* SoundExchange NPRM Comment at 8–9.

[22] CISAC & BIEM NPRM Comment at 4 (suggesting a maximum deadline of 9–12 months ''from the end of the financial year in which the rights were collected''); Music Reports NPRM Comment at 3 (proposing requirement to distribute royalties within 90 days following end of applicable month); Songwriters Guild of America, Inc. (''SGA'') NPRM Comment at 4 (suggesting required payment of royalties for matched works within three months of receipt). *See also* FMC NPRM Comment at 1 (supporting rule as proposed but expressing appreciation that the Office reserved the right to impose a timing requirement in the future).

[23] MLC NPRM Comment at 12.

[24] *Id.*

untimely or incomplete information from blanket licensees.[25]

After considering the comments and the MLC's reported operational expectations, the interim rule replaces the phrase ''for the month next preceding'' with alternative language similar to that proposed by the MLC to clarify that the MLC will pay out all royalties ready to be distributed to copyright owners when the MLC makes its regular monthly distributions. This encompasses royalties that have been reported by DMPs and matched to musical works, where the musical work copyright owner is known and located, where the MLC has all the necessary tax and financial information from the copyright owner to make a payment, and where the royalties are not subject to any dispute or other legal hold. This approach is intended to take into account the role of third parties, including DMPs and musical work copyright owners, for many of the inputs needed by the MLC before royalties can be distributed.

The Office believes that the interim rule strikes an appropriate balance in solidifying the expectation that the MLC will promptly pay copyright owners all royalties that can be paid on a monthly basis, while avoiding a requirement that may overlook the potential impact of dependencies outside the MLC's control. The Office acknowledges the MLC's statements that it has an inherent interest in timely payments to copyright owners, given that it is governed by and accountable to those copyright owners, and it is required to pay interest on accrued royalties for unmatched works.[26] To promote transparency in the timeliness of payments, the Office is separately considering whether the MLC should be required to report average royalty processing and distribution times as part of its annual report in a separate rulemaking and can revisit this issue if warranted.[27]

The MLC also objected that the requirement to immediately report adjustments on a monthly basis ''could be tremendously burdensome.'' [28] It explained that ''reports of adjustment from DMPs are likely to relate to royalty pool calculations, and to therefore result in a recalculation of the effective per-play rate, which would require an adjustment to all distributed (and undistributed) royalties.'' [29] The MLC also maintained it ''could be extremely costly with little benefit to copyright owners.'' [30] Instead, the MLC proposed that the rule only require it ''to report adjustments to copyright owners after it has received the total adjustments reported in the annual reports of usage delivered to the MLC by DMPs pursuant to proposed regulation § 210.27(f).'' [31] The MLC noted that this would ''alleviate the immense administrative burden'' of processing all adjustments immediately, though it also would not prevent the MLC from reporting adjustments more frequently than annually.[32] The Office did not receive any comments suggesting there was a need to report adjustments monthly, or opposing the MLC's proposal.

The Office finds the MLC's proposal reasonable and has adjusted the rule accordingly. The Office observes that changing the requirement to report adjustments at least on an annual basis may increase the value of the MLC providing a defined annual statement to copyright owners, as discussed below. As the MLC notes, an adjustment that affects royalty pool calculations would affect all previously reported royalties; an annual statement could significantly assist copyright owners—particularly independent songwriters and smaller music publishers—in reconciling their bookkeeping following a reported adjustment.

Content. The interim rule also includes several adjustments to the content that the MLC is required to report in royalty statements to copyright owners based on unopposed comments it has received.[33] Notably, the interim rule has added, at the suggestion of the MLC and FMC, a requirement to report ''[a] detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient to allow the copyright owner to assess the manner in which the royalty owed was determined and the accuracy of the royalty calculations, which shall include details on each of the components used in the calculation of the payable royalty pool.'' [34] This information is provided to copyright owners under the song-by-song license.[35] It will continue to be reported by DMPs to the MLC as part of their monthly reports of usage,[36] and the MLC intends to pass along this information to copyright owner.[37] The

[25] *Id.* SoundExchange asserted in its comments that ''[u]nder the Section 112/114 statutory licenses . . . it routinely receives late payments and reporting.'' SoundExchange NPRM Comment at 6.

[26] MLC *Ex Parte* Letter Aug. 16, 2020 at 7; *see* 17 U.S.C. 115(d)(3)(H)(ii).

[27] *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *The Public Musical Works Database and Transparency of the Mechanical Licensing Collective,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

[28] MLC NPRM Comment at 3.

[29] *Id.* at 3–4.

[30] *Id.* at 4.

[31] *Id.*

[32] *Id.* Under rules the Office is promulgating in a separate proceeding, DMPs may report adjustments in combination with their annual report of usage, but they are not required to do so. *See* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[33] The Office notes the use of the term ''featured artist'' as one of the required sound recording information fields reported on royalty statements. In comments responding to a separate notification of inquiry, the Alliance for Recorded Music (''ARM'') raised a concern that the term could cause ''confusion,'' saying, ''[f]rom a digital supply chain perspective, 'primary artist' is the preferred term as 'featured artist' is easily confused with the term 'featured' on another artist's recording, as in Artist X *feat.* Artist Y.'' ARM NOI Comment at 6, U.S. Copyright Office Dkt. No. 2020–8, available at *https://beta.regulations.gov/document/COLC-2020-0006-0001.* The Office appreciates ARM's concern, but will continue to use the term ''featured artist'' to be consistent with the statute, which uses the term to mean the primary recording artist. *See* 17 U.S.C. 115(d)(3)(E)(ii)(IV)(bb), (d)(3)(E)(iii)(I)(dd), (d)(4)(A)(ii)(I)(aa), (d)(10)(B)(i)(I)(aa).

In its NPRM, the Office sought comment on ''whether it is necessary to require reporting of sound recording copyright owner on royalty statements,'' given comments raising concerns about potential confusion since ''the legal owner of a sound recording copyright is not always the same as the party identified as the sound recording copyright owner in royalty metadata currently used in the digital music marketplace.'' 85 FR at 22555. FMC responded that this information would be ''at minimum, potentially useful''—particularly for self-published songwriters. FMC NPRM Comment at 1. Songwriters of North America (''SONA'') and Music Artists Coalition (''MAC'') supported inclusion of this field. SONA & MAC NPRM Comment at 4. SoundExchange, by contrast, recommended against requiring this field, citing ''serious doubts about the MLC's ability to report sound recording copyright owner accurately, because the MLC has no reason to track that data the way SoundExchange does'' as well as ''concerns about the confusion that could result from the MLC's widely disseminating that information even if accurate, since it may not correspond to other source information metadata used in the marketplace.'' SoundExchange NPRM Comment at 4 n.5. To the extent SoundExchange's concerns are warranted, the Office believes they are better addressed in provisions addressing DMP records of use and/or the MLC's public database. The presumption for this proceeding is that any information required to be included in the public database would be worthwhile of being reported to copyright owners in the royalty statements.

[34] MLC NPRM Comment App. at ii; FMC NPRM Comment at 2. *See also* Lowery Reply NOI Comment at 6 (''[T]he MLC should be required to publicly post at least an aggregated version of all information it receives from DMPs supporting the calculation of royalties (transactions, TCC, deductions from gross, etc.). It will be impossible for songwriters to conduct a desktop audit of their statements with their accountants if key elements of the calculations are missing.''). Although the interim rule does not, as Lowery proposed, require the MLC to publicly post this information, its provision on royalty statements will provide individual copyright owners with the ability to confirm the calculation of their royalties.

[35] 37 CFR 210.16(c)(2).

[36] *See* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[37] MLC NPRM Comment at 6.

MLC expressed concern that unless the regulations explicitly require it to report this information to copyright owners, the Office's separate confidentiality regulations might prevent disclosure.[38] The Office has added an explicit requirement in the regulations to clarify that the accounting information would not be considered confidential information and its disclosure to copyright owners by the MLC could not be prevented under confidentiality regulations.[39]

Several commenters suggested making certain content fields mandatory to report, including IPI, ISWC, and universal product code (UPC), which the Office has done.[40] In doing so, the Office reiterates that the interim rule only establishes a floor of what the MLC can report, and the Office understands that the MLC intends to report most, if not all, information it receives regarding royalties to copyright owners.[41]

The NPRM also solicited comments on whether the phrase ''known to the MLC'' is ''an appropriate standard for triggering an obligation to report information that the MLC is not expected to have for all musical works, sound recordings, and/or copyright owners?'' [42] The MLC responded affirmatively,[43] while SGA disagreed and said the MLC should be required to undertake best efforts to collect information it does not have.[44] After considering the comments, the Office has determined that ''known to the MLC'' is an appropriate standard for reporting certain types of information to copyright owners that the MLC may not necessarily have. To the extent the MLC has obligations to collect information related to identification of musical works and sound recordings, those obligations are already addressed elsewhere in the statute.[45] To report and distribute royalties, the MLC will need sufficient information to have matched the royalties to the works and identified the copyright owner, so any efforts to collect information and identify works and copyright owners—including policies and procedures for verifying information received from third parties and dealing with potentially conflicting information—occurs at an earlier stage than the one addressed by this rule, and the information reported to copyright owners will presumably also connect to information that the MLC makes available through the statutorily-prescribed public database. Additionally, the MLC has commented that it ''intends to provide as much data in the royalty statements as it has and that may be useful to copyright owners.'' [46]

Delivery of royalty statements. The Office has clarified the provision regarding delivery of royalty statements to copyright owners to address issues raised by commenters. The interim rule provides that, by default, royalty statements will be delivered to copyright owners electronically, including through a password-protected online portal.[47] The Office understands the MLC intends to provide a number of alternative types of royalty reporting at the request of copyright owners, but the interim rule states that at a minimum the MLC will provide a simplified report containing fewer data fields at the request of copyright owners.[48] The interim rule has also updated this provision with respect to the provision of paper statements. As the MLC has requested, the provision clarifies that a copyright owner may request to receive royalty statements by mail, and the MLC will be obliged to send a physical copy in simplified or summary format upon request where the statement reports ''a total royalty payable to the copyright owner for the month covered that is equal or greater than $100.'' [49]

Certification. In a carry-over from a requirement of the song-by-song statutory licensing regime, the NPRM proposed to require the MLC to certify monthly royalty statements under the blanket license where the total royalties distributed during the period covered by the statement exceed $100 using one of two statements.[50] This proposal was ''applaud[ed]'' by SGA,[51] and, as noted in the NPRM, had been supported by Music Reports in an earlier stage of comment.[52] SoundExchange, however, called the requirement ''unfair and unnecessary'' because ''the MLC simply cannot know if the service provider's royalty calculations and usage data were accurate.'' [53] The MLC voiced similar concerns, noting that the cost of the associated annual audit that would be required under the second proposed certification statement ''is expected to exceed $100,000—an expenditure that was not contemplated in the MLC's initial budgeting.'' [54] The MLC proposed that the requirement be removed entirely or, alternatively, be amended with language suggested by the MLC,[55] which clarifies that ''[t]he MLC can only certify its allocation and statementing processes.'' [56] The MLC sought an *ex parte* meeting to agree with the concerns raised by SoundExchange with respect to the MLC's inability to certify the accuracy of data on usage and royalty pools that emanates from the DMPs rather than the MLC, and proposed alternate language if the Office elected to retain the certification requirement.[57]

As background, the Office notes that the MMA includes additional

[38] *Id.* at 7.

[39] *Id.*

[40] CISAC & BIEM NPRM Comment at 4; SONA & MAC NPRM Comment at 4–5.

[41] The Office declines to adopt SGA's suggestion that royalty splits reported on statements be subject to confidentiality requirements. SGA NPRM Comment at 6, 7. The MMA expressly forecloses the possibility for ownership shares of musical works to remain confidential because this information is required to be included in the public musical works database. 17 U.S.C. 115(d)(3)(E)(i). The Office has previously considered and rejected confidentiality requirements that would prevent disclosure and use of information included in Statements of Account under the song-by-song license. 79 FR 56190, 56206 (Sept. 18, 2014) (noting such a proposal would have ''barred copyright owners from disclosing the contents of the statements of account to other parties who were downstream beneficiaries of the statutory royalties (such as songwriters entitled to receive a share of the royalties as part of their publishing contracts.)''). The Office notes additionally that in a concurrent proceeding on confidentiality requirements, one songwriter group has strongly opposed placing any confidentiality obligations on copyright owners regarding information contained in royalty statements issued to them. SONA NPRM Comment at 3–4, U.S. Copyright Office Dkt. No. 2020–7, available at *https://beta.regulations.gov/document/COLC-2020-0004-0001.* The MLC has expressed the same concern in this proceeding. MLC NPRM Comment at 7. *See generally* 85 FR 22559, 22561 (Apr. 22, 2020).

[42] 85 FR at 22557–58.

[43] MLC NPRM Comment at 14.

[44] SGA NPRM Comment at 7.

[45] 17 U.S.C. 115(d)(3)(C)(i)(III), (d)(3)(C)(i)(V). The statute also creates obligations for musical work copyright owners and DMPs to engage in efforts to provide information to the MLC. *Id.* at 115(d)(3)(E)(iv), (d)(4)(B).

[46] MLC NPRM Comment at 13; *see also id.* (''The Proposed Regulation is clear that it is identifying the minimum level of data that must be provided in monthly royalty statements.'').

[47] SGA endorsed the electronic delivery of royalty statements by default. SGA NPRM Comment at 4–5. SoundExchange noted the impracticalities of delivering statements by paper and even email given the file sizes involved. SoundExchange NPRM Comment at 14.

[48] MLC NPRM Comment at 13 (''[T]he MLC intends to make all information that would be helpful to copyright owners in a number of meaningful ways.'').

[49] MLC NPRM Comment App. at iv; MLC NPRM Comment at 9–11 (describing potential ''operational and cost difficulties'' necessitating this threshold); *see also* SoundExchange NPRM Comment at 13–14 (describing operational concern with language that would entitle receipt of ''monthly payments by an expensive payment method even when the payment is only one cent'').

[50] Under the non-blanket statutory license, licensees are required to certify to the truth of the statements made in monthly statements of account. 37 CFR 210.16(f). Annual statements of account are required to be certified by a Certified Public Accountant. 37 CFR 210.17(f).

[51] SGA NPRM Comment at 8.

[52] 85 FR at 22556 (citing Music Reports Initial NOI Comment at 5).

[53] SoundExchange NPRM Comment at 10–12.

[54] MLC NPRM Comment at 11.

[55] *Id.* at 11, App. at v.

[56] MLC *Ex Parte* Letter Aug. 16, 2020 at 6; *see* MLC NPRM Comment at 11.

[57] MLC *Ex Parte* Letter Aug. 16, 2020 at 5–7.

verification mechanisms. Correcting the longstanding lack of an audit right under the old section 115 statutory license in contrast to voluntary licensing practices, it allows the MLC to ''conduct an audit of a digital music provider operating under the blanket license to verify the accuracy of royalty payments by the digital music provider to the mechanical licensing collective.'' [58] And it added two separate audit provisions for the MLC itself. First, the statute requires the MLC itself to retain a qualified auditor to examine the books, records, and operation of the MLC beginning in the fourth full calendar year after initial designation of the MLC and every five years afterward.[59] The auditor is required to prepare a report addressing ''the implementation and efficacy of procedures of the mechanical licensing collective—(AA) for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties; (BB) to guard against fraud, abuse, waste, and the unreasonable use of funds; and (CC) to protect the confidentiality of financial, proprietary, and other sensitive information.'' [60] The report is required to be delivered to the MLC's board of directors and the Register of Copyrights and be made publicly available.[61] The MMA also permits a copyright owner entitled to receive payments of royalties for covered activities from the mechanical licensing collective to conduct an audit of the mechanical licensing collective to verify the accuracy of royalty payments by the mechanical licensing collective to such copyright owner.[62] The MMA's adoption of these audit provisions had been praised by stakeholders, although some have also noted that the adopted language also carries limits.[63]

Considering these provisions and the additional comments, the Office has retained the certification requirement, but with adjustments in light of the MLC and SoundExchange's comments. As explained in the NPRM, while the certification of usage reports by the DMPs, as required by the statute, serves an important purpose, that certification does not account for the additional processing of statements performed by the MLC, and the new audit right may not ameliorate the value of certification to copyright owners, including the minority of owners accustomed to receiving monthly certifications under the prior song-by-song statutory licensing system.[64] The Office acknowledges that it would be inappropriate for the MLC to certify as to facts and processes outside its control, and is therefore modifying the scope of the certification requirement to limit the statement to those facts that the MLC has knowledge about, as the MLC has proposed. The Office is also deferring (but not eliminating) the CPA review requirement for one year to provide time for the MLC to undertake a CPA examination of its processes and internal controls. Overall, this requirement is intended to assure copyright owners that the various inputs and calculations that result in a final royalty payment are verified, as is presently the case with the non-blanket license, although in this case the certification has been split to reflect the respective duties of the DMPs and the MLC.

Payment thresholds. Several commenters noted that the proposed minimum payment thresholds of $2 for direct deposit, $100 for paper checks, and $250 for wire transfer in the NPRM were appropriate;[65] however, both the MLC and SoundExchange found them low.[66] The MLC provided a table of payment thresholds from various U.S. and foreign collective management organizations and rights management organizations in one of its *ex parte* submissions, which helpfully provides data points for industry practices on this issue.[67] Based on these submissions, the interim rule raises the minimum payment threshold for direct deposit from $2 to $5, as suggested by the MLC.[68] These thresholds are ceilings; the MLC may in its judgment establish lower thresholds.[69]

The interim rule adds an additional provision, at the MLC's request, specifying that where the collective elects to defer the royalty payment and statement because the accrued royalties did not exceed the applicable threshold, if a copyright owner submits a written request, the mechanical licensing collective will make available information detailing the accrued unpaid royalties processed as of the date of the request, and removes the proposed provision that would obligate the MLC to pay royalties below the $5 threshold upon such requests.[70] This clarification is intended to promote operational efficiencies while still preserving the ability of copyright owners to obtain sufficient information with respect to accrued royalties below the $5 threshold.[71]

Annual statements. The NPRM did not require the MLC to provide annual statements to musical work copyright owners, but sought comment on this issue. In response, the MLC agreed with the proposed rule's approach, stating ''a regulation at the outset of its operations requiring reporting in annual statements that would not, as acknowledged, provide any additional information would be overly prescriptive.'' [72] But CISAC & BIEM,[73] FMC,[74] and SGA [75] commented in support of requiring an annual statement. SGA wrote, ''Annual Statements serve an important purpose for small businesses (including independent creators acting as their own music publishing entities), which generally lack extensive accounting resources and need as many available resources as possible in conducting their own annualized, internal bookkeeping audits.'' [76] FMC similarly said annual statements ''would be helpful for small publishers and self-published writers' accounting and tax purposes'' and added that ''while the MMA did not include making accounting more efficient for smaller copyright holders as an explicit objective, it conforms to the overarching goal of creating a more functional ecosystem.'' [77]

[58] 17 U.S.C. 115(d)(4)(D). *See* U.S. Copyright Office, Copyright and the Music Marketplace 108–09 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (decrying lack of audit right); Tr. at 7036:14–21 (May 19, 2008), Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, Docket No. 2006–3–CRB DPRA, *https://app.crb.gov/case/viewDocument/12669* (describing audit process under voluntary licenses).

[59] 17 U.S.C. 115(d)(3)(D)(ix)(II).

[60] *Id.* at 115(d)(3)(D)(ix)(II)(bb).

[61] *Id.* at 115(d)(3)(D)(ix)(II).

[62] *Id.* at 115(d)(3)(L).

[63] *See, e.g.,* Lowery Reply NOI Comment at 7, 11.

[64] 85 FR at 22556.

[65] SGA NPRM Comment at 8; FMC NPRM Comment at 2.

[66] SoundExchange NPRM Comment at 12–13 (''Making frequent small payments to some copyright owners (particularly by an expensive payment method) diverts resources that otherwise could be used to benefit royalty recipients generally, such as by the MLC's hiring more customer service representatives, investing in improvements to its copyright owner portal, or engaging in outreach to unregistered publishers.'').

[67] MLC *Ex Parte* Letter Apr. 3, 2020 at 12.

[68] MLC NPRM Comment at 8.

[69] SGA suggested lowering the payment threshold ''in light of the difficult economic times many music creators are facing or are about to confront due to the COVID–19 pandemic and its aftermath.'' SGA NPRM Comment at 8. The interim rule would permit the MLC to do just that.

[70] MLC NPRM Comment at 9, App. at v–vi.

[71] *Id.* at 9 (''[A]n unfettered ability to request royalty statements for royalties falling below the threshold would substantially increase the MLC's processing costs and would require the MLC to engage in additional technological programming to accommodate these requests.'').

[72] MLC NPRM Comment at 13–14.

[73] CISAC & BIEM NPRM Comment at 4.

[74] FMC NPRM Comment at 2.

[75] SGA NPRM Comment at 8–9.

[76] *Id.* at 9.

[77] FMC NPRM Comment at 2.

The MLC responded to these comments in a follow-up *ex parte* meeting.[78] There, the MLC represented that ''it intends to provide copyright owners with the ability to access their royalty information in a number of ways through the MLC Portal, including to allow copyright owners to view reports of information on an annual basis.'' [79] It reiterated that it does not believe regulations should include a formal requirement to provide annual reports, saying the best way to address songwriters' needs for annual statements ''will be by providing functionality in the MLC Portal that enables songwriters and publishers to view their royalty data across multiple periods that *they* select,'' and adding that ''[t]his approach will allow each copyright owner to define the start and end dates of these annual (or other) periods based on their own preferences (*e.g.,* calendar year versus fiscal year).'' [80]

The Office appreciates the MLC's response. While its proposed approach is not unreasonable, the Office ultimately concludes that, given the requirement for annual statements in the existing song-by-song compulsory license, the support expressed by other commenters for regulatory certainty with respect to an annual statement requirement, and the MLC's intent to provide the ability to generate annual statements, it is appropriate for the interim rule to include an annual statement requirement. As noted, other comments indicate that certainty of an annual roll-up may be beneficial to smaller businesses, and so the regulatory language requires the MLC to deliver a cumulative statement including the information reported in monthly statements as well as any adjustment. But the language adopted provides the MLC with flexibility in implementing it, and it seems it would not require any more from the MLC than what it is already planning to provide. But at the same time, it communicates a level of certainty for purpose of stakeholder expectations and planning, which is intended to further the overall operation of the blanket license regime.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Interim Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

[78] *See* MLC *Ex Parte* Letter Aug. 16, 2020 at 8–9.

[79] *Id.* at 8.

[80] MLC *Ex Parte* Letter Aug. 16, 2020 at 8–9.

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

■ 2. Add § 210.29 to read as follows:

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(a) *General.* This section prescribes reporting obligations of the mechanical licensing collective to copyright owners for the distribution of royalties for musical works, licensed under the blanket license for digital uses prescribed in 17 U.S.C. 115(d)(1), that have been matched, either through the processing by the mechanical licensing collective upon receipt of a report of usage and royalty payment from a digital music provider, or during the holding period for unmatched works as defined in 17 U.S.C. 115(d)(3)(H)(i).

(b) *Distribution of royalties and royalty statements.* (1) Royalty distributions shall be made on a monthly basis and shall include, separately or together:

(i) All royalties payable to a copyright owner for a musical work matched in the ordinary course under 17 U.S.C. 115(d)(3)(G)(i)(II); and

(ii) All accrued royalties for any particular musical work that has been matched and a proportionate amount of accrued interest associated with that work.

(2) Royalty distributions based on adjustments to reports of usage by digital music providers in prior periods shall be made by the mechanical licensing collective at least once annually, upon submission of the annual reports of usage by digital music providers reporting total adjustments to the mechanical licensing collective pursuant to § 210.27(f) and (g)(3) and (4).

(3) Royalty distributions shall be accompanied by corresponding royalty statements containing the information set forth in paragraph (c) of this section for the royalties contained in the distribution.

(c) *Content*—(1) *General content of royalty statements.* Accompanying the distribution of royalties to a copyright owner, the mechanical licensing collective shall provide to the copyright owner a statement that includes, at a minimum, the following information:

(i) The period (month and year) covered by the statement, and the period (month and year) during which the reported activity occurred. For adjustments, the mechanical licensing collective shall report both the period (month and year) during which the original reported activity occurred and the date on which the digital music provider reported the adjustment.

(ii) The name and address of the mechanical licensing collective.

(iii) The name and mechanical licensing collective identification number of the copyright owner.

(iv) ISNI and IPI name and identification number for each songwriter, administrator, and musical work copyright owner, to the extent it has been provided to the mechanical licensing collective by a copyright owner.

(v) The name and mechanical licensing collective identification number of the copyright owner's administrator (if applicable), to the extent one has been provided to the mechanical licensing collective by a copyright owner.

(vi) Payment information, such as check number, automated clearing house (ACH) identification, or wire transfer number.

(vii) The total royalty payable to the relevant copyright owner for the month covered by the royalty statement.

(2) *Musical work information.* For each matched musical work owned by the copyright owner for which accompanying royalties are being distributed to that copyright owner, the mechanical licensing collective shall report the following information:

(i) The musical work name, including primary and any alternative and parenthetical titles for the musical work known to the mechanical licensing collective.

(ii) ISWC for the musical work, to the extent it is known to the mechanical licensing collective.

(iii) The mechanical licensing collective's standard identification number of the musical work.

(iv) The administrator's unique identifier for the musical work, to the extent one has been provided to the mechanical licensing collective by a copyright owner or its administrator.

(v) The name(s) of the songwriter(s), to the extent they are known to the mechanical licensing collective.

(vi) The percentage share of musical work owned or controlled by the copyright owner.

(vii) For each sound recording embodying the musical work, the identifying information enumerated in paragraph (c)(3) of this section and the royalty information enumerated in paragraph (c)(4) of this section.

(3) *Sound recording information.* (i) For each sound recording embodying a musical work included in a royalty statement, the mechanical licensing collective shall report the following information:

(A) The sound recording name(s), including all known alternative and parenthetical titles for the sound recording.

(B) The featured artist(s).

(ii) The mechanical licensing collective shall report the following information to the extent it is known to the mechanical licensing collective:

(A) The record label name(s).

(B) ISRC(s).

(C) The sound recording copyright owner(s).

(D) Playing time.

(E) Album title(s) or product name(s).

(F) Album or product featured artist(s), if different from sound recording featured artist(s).

(G) Distributor(s).

(H) UPC(s).

(4) *Royalty information.* The mechanical licensing collective shall separately report, for each service, offering, or activity reported by a blanket licensee, the following royalty information for each sound recording embodying a musical work included in a royalty statement:

(i) The name of the blanket licensee and, if different, the trade or consumer facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities.

(ii) The service tier or service description.

(iii) The use type (download, limited download, or stream).

(iv) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays.

(v) A detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient to allow the copyright owner to assess the manner in which the royalty owed was determined and the accuracy of the royalty calculations, which shall include details on each of the components used in the calculation of the payable royalty pool.

(vi) The royalty rate and amount.

(vii) The interest amount.

(viii) The distribution amount.

(d) *Cumulative statements of account, and adjustments.* (1) For royalties reported under paragraph (b)(1)(ii) of this section, the mechanical licensing collective shall provide a cumulative statement of account that includes, in addition to the information in paragraph (c) of this section, a clear identification of the total period covered and the total royalty payable for the period.

(2) For adjustments reported under paragraph (b)(2) of this section, the mechanical licensing collective shall clearly indicate the original reporting period of the royalties being adjusted.

(e) *Delivery of royalty statements.* (1) Royalty statements may be delivered electronically, including by providing access to statements through an online password protected portal, accompanied by written notification of the availability of the statement in the portal.

(2) The mechanical licensing collective shall provide by request a separate, simplified report containing fewer data fields that may be more understandable for the copyright owner, and may provide royalty information to copyright owners by request in alternative formats.

(3) Upon written request of the copyright owner, the mechanical licensing collective may deliver a physical statement by mail where the statement reports a total royalty payable to the copyright owner for the period covered that is equal or greater than $100. Royalty statements delivered by mail are not required to contain all information identified in paragraph (c) of this section, but may instead provide information in a simplified or summary format.

(f) *Clear statements.* The information required by paragraph (c) of this section requires intelligible, legible, and unambiguous statements in the royalty statements without incorporation of facts or information contained in other documents or records.

(g) *Certification.* (1) Each royalty statement in which the total royalty payable to the relevant copyright owner for the month covered is equal to or greater than $100 shall be accompanied by:

(i) The name of the person who is signing and certifying the statement.

(ii) A signature of a duly authorized officer of the mechanical licensing collective.

(iii) The date of signature and certification.

(iv) The title or official position held by the person who is signing and certifying the statement.

(v) The following statement: This statement was prepared by the Mechanical Licensing Collective and/or its agent using processes and internal controls that were suitably designed to generate monthly statements that accurately allocate royalties using usage and royalty information provided by digital music providers and musical works information as reflected in the Mechanical Licensing Collective's musical works database.

(2) Beginning in the first calendar year following the license availability date, the certification must also include a statement establishing that such processes and internal controls were subject to an examination, during the past year, by a licensed Certified Public Accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were so suitably designed.

(h) *Reporting threshold.* (1) Subject to paragraph (h)(2) of this section, a separate royalty statement shall be provided for each month during which there is any activity relevant to the distribution of royalties under the blanket license.

(2) Royalties under the blanket license shall not be considered payable, and no royalty statement shall be required, until the cumulative unpaid royalties collected for the copyright owner equal at least one cent. Moreover, in any case in which the cumulative unpaid royalties under the blanket license that would otherwise be distributed by the mechanical licensing collective to the copyright owner are less than $5 if the copyright owner receives payment by direct deposit, $100 if the copyright owner receives payment by physical check, or $250 if the copyright owner receives payment by wire transfer, the mechanical licensing collective may choose to defer the payment date for such royalties and provide no royalty statements until the earlier of the time for rendering the royalty statement for the month in which the unpaid royalties under the blanket license for the copyright owner exceed the threshold, at which time the mechanical licensing collective may provide one statement and payment covering the entire period for which royalty payments were deferred.

(3) Where the mechanical licensing collective elects to defer the royalty payment and statement to a copyright owner pursuant to paragraph (h)(2) of this section because the accrued royalties did not exceed the applicable threshold, and if a copyright owner submits a written request, the mechanical licensing collective shall make available to that copyright owner information detailing the accrued unpaid royalties processed as of the date of the request.

(4) If the mechanical licensing collective is required, under applicable tax law and regulations, to make backup withholding from its payments required hereunder, the mechanical licensing collective shall indicate the amount of such withholding on the royalty statement or on or with the distribution.

(i) *Annual statement.* The mechanical license collective shall provide an annual statement by electronic means to any copyright owner who has received at least one royalty statement under paragraph (h)(1) of this section in the calendar year preceding. The annual statement shall include a cumulative statement of the information reported in the monthly royalty statements in the year preceding, as well as a statement of any adjustments to royalty distributions reported in the year preceding.

Dated: September 3, 2020.

Maria Strong,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–20079 Filed 9–16–20; 8:45 am]

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Part IV

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Copyright Office

37 CFR Part 210

The Public Musical Works Database and Transparency of the Mechanical Licensing Collective; Proposed Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2020–8]

The Public Musical Works Database and Transparency of the Mechanical Licensing Collective

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding the Musical Works Modernization Act, title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. Title I establishes a blanket compulsory license, which digital music providers may obtain to make and deliver digital phonorecords of musical works. The law establishes a new blanket license to become available on the January 1, 2021 license availability date that will be administered by a mechanical licensing collective, which will make available a public musical works database as part of its statutory duties. Having solicited public comments through previous notifications of inquiry, through this notice the Office is proposing regulations concerning the new blanket licensing regime, including prescribing categories of information to be included in the public musical works database, as well as rules related to the usability, interoperability, and usage restrictions of the database. The Office is also proposing regulations in connection with its general regulatory authority related to ensuring appropriate transparency of the mechanical licensing collective itself.

DATES: Written comments must be received no later than 11:59 Eastern Time on October 19, 2020.

ADDRESSES: For reasons of Government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://copyright.gov/rulemaking/mma-transparency.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov* or Anna B. Chauvet, Associate General Counsel, by email at *achau@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551 (''MMA'').[1] Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] It does so by switching from a song-by-song licensing system to a blanket licensing regime that will become available on January 1, 2021 (the ''license availability date''), and be administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office.[3] Among other things, the MLC is responsible for ''[c]ollect[ing] and distribut[ing] royalties'' for covered activities, ''[e]ngag[ing] in efforts to identify musical works (and shares of such works) embodied in particular sound recordings and to identify and locate the copyright owners of such musical works (and shares of such works),'' and ''[a]dminister[ing] a process by which copyright owners can claim ownership of musical works (and shares of such works).'' [4] It also must ''maintain the musical works database and other information relevant to the administration of licensing activities under [section 115].'' [5]

A. Regulatory Authority Granted to the Copyright Office

The MMA enumerates several regulations that the Copyright Office is specifically directed to promulgate to govern the new blanket licensing regime, and Congress invested the Copyright Office with ''broad regulatory authority'' [6] to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license].'' [7] The MMA specifically directs the Copyright Office to promulgate regulations related to the MLC's creation of a free database to publicly disclose musical work ownership information and identify the sound recordings in which the musical works are embodied.[8] As discussed more below, the statute requires the public database to include various types of information, depending upon whether a musical work has been matched to a copyright owner.[9] For both matched and unmatched works, the database must also include ''such other information'' ''as the Register of Copyrights may prescribe by regulation.'' [10] The database must ''be made available to members of the public in a searchable, online format, free of charge,'' [11] as well as ''in a bulk, machine-readable format, through a widely available software application,'' to certain parties, including blanket licensees and the Copyright Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.'' [12]

In addition, the legislative history contemplates that the Office will ''thoroughly review[ ]'' [13] policies and procedures established by the MLC and its three committees, of which the MLC is statutorily bound to ensure are ''transparent and accountable,'' [14] and promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [15]

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.''); *see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[4] 17 U.S.C. at 115(d)(3)(C)(i)(V).

[5] *Id.* at 115(d)(3)(C)(i)(IV).

[6] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4.

[7] 17 U.S.C. 115(d)(12)(A).

[8] *See id.* at 115(d)(3)(E), (e)(20).

[9] *Id.* at 115(d)(3)(E)(ii), (iii).

[10] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

[11] *Id.* at 115(d)(3)(E)(v).

[12] *Id.*

[13] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. The Conference Report further contemplates that the Office's review will be important because the MLC must operate in a manner that can gain the trust of the entire music community, but can only be held liable under a standard of gross negligence when carrying out certain of the policies and procedures adopted by its board. Conf. Rep. at 4.

[14] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[15] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. *See also* SoundExchange Initial September NOI Comment at 15; Future of Music Coalition (''FMC'') Reply September NOI Comment at 3 (appreciating ''SoundExchange's warning against too-detailed regulatory language,'' but ''urg[ing] the Office to balance this concern for pragmatism and flexibility

Congress acknowledged that ''[a]lthough the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations.'' [16] Legislative history further states that ''[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.'' [17] Accordingly, in designating the MLC, the Office stated that it ''expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest,'' and that ''the Register intends to exercise her oversight role as it pertains to matters of governance.'' [18] Finally, as detailed in the Office's prior notification, while the MMA envisions the Office reasonably and prudently exercising regulatory authority to facilitate appropriate transparency of the collective and the public musical works database, the statutory language as well as the collective's structure separately include aspects to promote disclosure absent additional regulation.[19]

B. Rulemaking Background

Against that backdrop, on September 24, 2019, the Office issued a notification of inquiry (''September NOI'') seeking public input on a variety of aspects related to implementation of title I of the MMA, including issues that should be considered regarding information to be included in the public musical works database (*e.g.,* which specific additional categories of information might be appropriate to include by regulation), as well as the usability, interoperability, and usage restrictions of the database (*e.g.,* technical or other specific language that might be helpful to consider in promulgating regulations, discussion of the pros and cons of applicable standards, and whether historical snapshots of the database should be maintained to track ownership changes over time).[20] In addition, the September NOI sought public comment on any issues that should be considered relating to the general oversight of the MLC.[21]

In response, many commenters emphasized the importance of transparency of the public database and the MLC's operations,[22] and urged the Office to exercise ''expansive'' [23] and ''robust'' [24] oversight. Given these comments, on April 22, 2020, the Office issued a second notification of inquiry seeking further comment on information to be included in the public musical works database, usability, interoperability, and usage restrictions of the database, and transparency and general oversight of the MLC (''April NOI'').[25]

Having reviewed and considered all relevant comments received in response to both notifications of inquiry, and having engaged in *ex parte* communications with commenters, the Office issues a proposed rule regarding the categories of information to be included in the public musical works database, as well as the usability, interoperability, and usage restrictions of the database. The Office is also proposing regulations concerning its general regulatory authority related to ensuring appropriate transparency of the mechanical licensing collective itself. Commenters are reminded that while the Office's regulatory authority is relatively broad, it is obviously constrained by the law Congress enacted.[26] As previously noted, given the start-up nature of the collective, after reviewing the comments received in response to this proposed rule the Office will consider whether fashioning an interim rule, rather than a final rule, may be best-suited to ensure a sufficiently responsive and flexible regulatory structure.[27] Where appropriate, the proposed rule is intended to grant the MLC flexibility in various ways instead of adopting certain oversight suggestions that may prove overly burdensome as it prepares for the license availability date. For example, and as discussed below, the proposed rule grants the MLC flexibility in the following ways:

- Flexibility to label fields in the public database, as long as the labeling

against the need to provide as much clear guidance and oversight as possible to encourage trust'').

[16] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[17] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[18] 84 FR at 32280.

[19] *See* 85 FR 22568, 22570–71 (Apr. 22, 2020) (detailing various ways the statute promotes transparency of the mechanical licensing collective, such as by requiring the collective to publish an annual report, make its bylaws publicly available and its policies and practices ''transparent and accountable,'' identify a point of contact for publisher inquiries and complaints with timely redress, establish an anti-comingling policy for funds collected and those not collected under section 115, and submit itself to a public audit every five years; the statute also permits copyright owners to audit the collective to verify the accuracy of royalty payments, and establishes a five-year designation process for the Office to periodically review the mechanical licensing collective's performance).

[20] 84 FR 49966, 49972 (Sept. 24, 2019).

[21] *Id.* at 49973. All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Specifically, comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001,* and comments received in response to the April 2020 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=COLC-2020-0006.* Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* The Office encourages, although does not require, parties to refrain from requesting *ex parte* meetings on this notice of proposed rulemaking until they have submitted written comments. As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters. References to these comments are by party name (abbreviated where appropriate), followed by ''Initial September NOI Comment,'' ''Reply September NOI Comment,'' ''April NOI Comment,'' ''Letter,'' or ''*Ex Parte* Letter,'' as appropriate.

[22] *See* Music Artists Coalition (''MAC'') Initial September NOI Comment at 2 (indicating ''the need for more transparency'' regarding the MLC's structure); Music Innovation Consumers (''MIC'') Coalition Initial September NOI Comment at 3 (''All stakeholders in the music marketplace benefit when current and accurate information about copyright ownership is easily accessible.''); Screen Composers Guild of Canada (''SCGC'') Reply Comment at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001* (''We urge you to make the choice that gives us transparency in the administration and oversight of our creative works, and a fair chance at proper compensation for those works, now and in the future.''); Iconic Artists LLC Initial Comment at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001* (''In the current paradigm there is a need for greater transparency and accuracy in reporting.''); DLC Reply September NOI Comment at 28 (noting that ''transparency will be critical to ensuring that the MLC fulfills its duties in a fair and efficient manner'').

[23] Songwriters Guild of America, Inc. (''SGA'') Initial September NOI Comment at 6.

[24] FMC Reply September NOI Comment at 2. *See also* Recording Academy Initial September NOI Comment at 4; Lowery Reply September NOI Comment at 2.

[25] 85 FR at 22568. The Office disagreed with the MLC that regulations regarding issues related to transparency ''may be premature'' because the MLC's ''policies and procedures are still being developed''—including because the statute directs the Office to promulgate regulations concerning contents of the public database. *Id.* at 22570; 17 U.S.C. 115(d)(3)(E)(ii)(V), (iii)(II); MLC Initial September NOI Comment at 30–31.

[26] *See, e.g., Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)). *See also* Conf. Rep. at 4, 12.

[27] 85 FR at 22571.

considers industry practice and reduces the likelihood of user confusion.

- Flexibility not to include information regarding terminations, performing rights organization (''PRO'') affiliation, and DDEX Party Identifier (DPID) in the public database.
- Flexibility to allow songwriters, or their representatives, to have songwriter information listed anonymously or pseudonymously.
- Flexibility as to the most appropriate method for archiving and maintaining historical data to track ownership and other information changes in the public database.
- Flexibility as to the most appropriate method for displaying data provenance information in the public database.
- Flexibility on the precise disclaimer language used in the public database to alert users that the database is not an authoritative source for sound recording information.
- Flexibility to include information in the public database that is not specifically identified by the statute but the MLC finds useful (but would not have serious privacy or identity theft risks to individuals or entities).
- Flexibility to develop reasonable terms of use for the public database, including restrictions on use.
- Flexibility to block third parties from bulk access to the public database after attempts to bypass marginal cost recovery or where persons have engaged in other unlawful activity with respect to the database.
- Flexibility regarding the initial format in which the MLC provides bulk access to the public database.

To aid the Office's review, it is requested that where a submission responds to more than one of the below categories, it be divided into discrete sections that have clear headings to indicate the category being discussed in each section. Comments addressing a single category should also have a clear heading to indicate which category it discusses. The Office welcomes parties to file joint comments on issues of common agreement and consensus. While all public comments are welcome, should parties disagree with aspects of the proposed rule, the Office encourages parties to provide specific proposed changes to regulatory language for the Office to consider.

II. Proposed Rule

A. Categories of Information in the Public Musical Works Database

As noted above, the MLC must establish and maintain a free public database of musical work ownership information that also identifies the sound recordings in which the musical works are embodied,[28] a function expected to provide transparency across the music industry.[29] While the mechanical licensing collective must ''establish and maintain a database containing information relating to musical works,'' [30] the statute and legislative history emphasize that the database is meant to benefit the music industry overall and is not ''owned'' by the collective itself.[31] Under the statute, if the Copyright Office designates a new entity to be the mechanical licensing collective, the Office must ''adopt regulations to govern the transfer of licenses, funds, records, *data,* and administrative responsibilities from the existing mechanical licensing collective *to the new entity.*'' [32] The legislative history highlights the intent of the public database—providing access to musical works ownership information and promoting transparency across the music industry [33]—and distinguishes it from past attempts to control and/or own industry data.[34] Accordingly, the MLC ''agrees that the data in the public MLC musical works database is not owned by the MLC or its vendor,'' and that ''data in this database will be accessible to the public at no cost, and bulk machine-readable copies of the data in the database will be available to the public, either for free or at marginal cost, pursuant to the MMA.'' [35]

For musical works that have been matched (*i.e.,* the copyright owner of such work (or share thereof) has been identified and located), the statute requires the public database to include:

1. The title of the musical work;
2. The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner;
3. Contact information for such copyright owner; and
4. To the extent reasonably available to the MLC, (a) the ISWC for the work, and (b) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist,[36] sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works.[37]

For unmatched musical works, the statute requires the database to include, to the extent reasonably available to the MLC:

1. The title of the musical work;
2. The ownership percentage for which an owner has not been identified;
3. If a copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner;
4. Identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works; and
5. Any additional information reported to the MLC that may assist in identifying the work.[38]

For both matched and unmatched works, the public database must also include ''such other information'' ''as the Register of Copyrights may prescribe by regulation.'' [39] The ''Register shall use its judgement to determine what is

[28] 17 U.S.C. 115(d)(3)(E), (e)(20).

[29] *See* The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Sept. 1, 2020) (noting that the MLC will ''promote transparency'' by ''[p]roviding unprecedented access to musical works ownership information through a public database'').

[30] 17 U.S.C. 115(d)(3)(E)(i).

[31] *See* Castle April NOI Comment at 1 (''The musical works database does not belong to the MLC or The MLC and if there is any confusion about that, it should be cleared up right away.''). Any use by the Office referring to the public database as ''the MLC's database'' or ''its database'' was meant to refer to the creation and maintenance of the database, not ownership.

[32] 17 U.S.C. 115(d)(3)(B)(ii)(II) (emphasis added).

[33] *See* 164 Cong. Rec. S6292, 6293 (daily ed. Sept. 25, 2018) (statement of Sen. Hatch) (''I need to thank Chairman Grassley, who shepherded this bill through the committee and made important contributions to the bill's oversight and transparency provisions.''); 164 Cong. Rec. S 501, 504 (daily ed. Jan. 24, 2018) (statement of Sen. Coons) (''This important piece of legislation will bring much-needed transparency and efficiency to the music marketplace.''); 164 Cong. Rec. H3522, 3541 (daily ed. Apr. 25, 2018) (statement of Rep. Steve Chabot); 164 Cong. Rec. H3522 at 3542 (daily ed. Apr. 25, 2018) (statement of Rep. Norma Torres).

[34] Conf. Rep. at 6 (''Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on.''); *id.* (noting that the Global Repertoire Database project, an EU-initiated attempt to create a comprehensive and authoritative database for ownership and administration of musical works, ''ended without success due to cost and data ownership issues'').

[35] MLC *Ex Parte* Letter Aug. 21, 2020 (''MLC *Ex Parte* Letter #7'') at 2. The MLC also confirmed that ''the musical work and sound recording data used by the MLC to allocate royalties to copyright owners will be the same musical work and sound recording data that is made available in the public database.'' *Id.* at 3–4. *See* Music Reports April NOI Comment at 2.

[36] The Alliance for Recorded Music (''ARM'') asks that ''the MLC be required to label [the featured artist field] . . . using the phrase 'primary artist,' '' because '' 'primary artist' is the preferred term as 'featured artist' is easily confused with the term 'featured' on another artist's recording, as in Artist X feat. Artist Y.'' ARM April NOI Comment at 6. Because this is a statutory term and the Office wishes to afford the MLC some flexibility in labeling the public database, it tentatively declines this request. The proposed rule does, however, require the MLC to consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion.

[37] 17 U.S.C. 115(d)(3)(E)(ii).

[38] *Id.* at 115(d)(3)(E)(iii).

[39] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

an appropriate expansion of the required fields, but shall not adopt new fields that have not become reasonably accessible and used within the industry unless there is widespread support for the inclusion of such fields.'' [40]

As noted in the April NOI, in considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office has focused on fields that advance the goal of the public database: Reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed by digital music providers (''DMPs'') operating under the section 115 statutory license.[41] At the same time, the Office is mindful of the MLC's corresponding duties to keep confidential business and personal information secure and inaccessible; for example, data related to computation of market share is contemplated by the statue as sensitive and confidential.[42] Recognizing that a robust musical works database may contain many fields of information, the proposed rule may be most valuable in establishing a floor of required information that users can reliably expect to access in the public database, while providing the MLC with flexibility to include additional data fields that it finds helpful.[43] Both notifications of inquiry asked which specific additional categories of information, if any, should be required for inclusion in the public database, and stakeholder comments, generally seeking inclusion of additional information, are discussed by category below.[44]

1. Songwriter or Composer

Commenters overwhelmingly agreed with the Office's tentative conclusion that the database should include songwriter and composer information,[45] including the MLC.[46] The proposed rule requires the MLC to include songwriter and composer information in the public database, to the extent reasonably available to the collective.[47] In response to a concern raised about songwriters potentially wanting to mask their identity to avoid being associated with certain musical works, the proposed rule grants the MLC discretion to allow songwriters, or their representatives, the option of having songwriter information listed anonymously or pseudonymously.[48]

2. Studio Producer

As the statute requires the public database to include ''producer,'' to the extent reasonably available to the MLC,[49] so does the proposed rule. Initially, there appeared to be stakeholder disagreement about the meaning of the term ''producer,'' which has since been resolved to clarify that ''producer'' refers to the studio producer.[50] Because the term ''producer'' relates not only to the public database, but also to information provided by digital music providers in reports of usage, the Office included an overarching definition of ''producer'' in its interim rule concerning reports of usage, notices of license, and data collection efforts, among other things, that applies throughout its section 115 regulations to define ''producer'' as the studio producer.[51]

3. Unique Identifiers

As noted above, the statute requires the MLC to include ISRC and ISWC codes, when reasonably available.[52] According to the legislative history, ''[u]sing standardized metadata such as ISRC and ISWC codes, is a major step forward in reducing the number of unmatched works.'' [53]

In response to the September NOI, the DLC proposed including the Interested Parties Information (IPI) [54] or

[40] Conf. Rep. at 7.

[41] 85 FR at 22573. *See* Conf. Rep. at 7 (noting that the ''highest responsibility'' of the MLC includes ''efforts to identify the musical works embodied in particular sound recordings,'' ''identify[ing] and locat[ing] the copyright owners of such works so that [the MLC] can update the database as appropriate,'' and ''efficient and accurate collection and distribution of royalties'').

[42] 17 U.S.C. 115(d)(3)(J)(i)(II)(bb). *See* MLC Initial September NOI Comment at 24 (contending that not all information contained in its database ''would be appropriate for public disclosure,'' and that it ''should be permitted to exercise reasonable judgment in determining what information beyond what is statutorily required should be made available to the public'').

[43] *See* 85 FR 22549 (Apr. 22, 2020) (proposing a floor of categories of information to be required in periodic reporting to copyright owners, but noting that the MLC expects to include additional information); U.S. Copyright Office, Interim Rule, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[44] 84 FR at 49972; 85 FR at 22573. *See, e.g.,* SoundExchange Initial September NOI Comment at 6 (''[T]he data fields recited in the statute should be viewed as a minimal and vaguely described set of data for understanding rights with respect to a musical work in a crowded field where there are many millions of relevant works with similar titles in different languages and complicated ownership structures to understand and communicate.'').

[45] *See* SGA Initial September NOI Comment at 2 (''While the names of copyright owners and administrators associated with a musical work may change on a constant basis, and other variables and data points are subject to frequent adjustment, the title and the names of the creators never vary from the date of a work's creation forward.''); The International Confederation of Societies of Authors and Composers (''CISAC'') & the International Organisation representing Mechanical Rights Societies (''BIEM'') April NOI Comment at 2; Songwriters of North America (''SONA'') April NOI Comment at 2; DLC April NOI Comment at 4 n.19; *see also* Barker Initial September NOI Comment at 2; FMC Reply September NOI Comment at 2; DLC Reply September NOI Comment at 26.

[46] MLC April NOI Comment at 9 (agreeing with inclusion of songwriter information for musical works); MLC Reply September NOI Comment at 32 (same).

[47] Because the statute's definition of ''songwriter'' includes composers, the proposed rule uses the term ''songwriter'' to include both songwriters and composers. 17 U.S.C. 115(e)(32). To reduce the likelihood of confusion, the MLC may want to consider labeling this field ''Songwriter or Composer'' in the public database. Following the statutory language, the proposed rule requires the MLC to include the songwriter field in the public database, and the other fields discussed below, ''to the extent reasonably available to the mechanical licensing collective.'' *See id.* at 115(d)(3)(E)(ii)(IV), (iii)(I). *See also* U.S. Copyright Office, Interim Rule, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register** (requiring the MLC to report certain types of information to copyright owners ''known to the MLC'').

[48] *See* Kernen NPRM Comment at 1, U.S. Copyright Office Dkt. No. 2020–7, available at *https://beta.regulations.gov/document/COLC-2020-0004-0001.*

[49] 17 U.S.C. 115(d)(3)(E)(ii)(IV), (iii)(I)(dd). *See* MLC April NOI Comment at 9 (stating that it ''is willing to include producer information in the public database to the extent the Office requires it be reported from DMPs''). The Office notes that the statute requires digital music providers to report ''producer'' to the mechanical licensing collective. 17 U.S.C. 115(d)(3)(E)(ii)(IV), (iii)(I)(dd). *See also* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[50] *See* MLC Initial September NOI Comment at 13 n.6 (originally believing that ''producer'' referred to ''the record label or individual or entity that commissioned the sound recording''); Recording Academy Initial September NOI Comment at 3 (urging Office to ''clarify that a producer is someone who was part of the creative process that created a sound recording''); Recording Industry Association of America, Inc. (''RIAA'') Initial September NOI Comment at 11 (stating ''producer'' should be defined as ''the primary person(s) contracted by and accountable to the content owner for the task of delivering the recording as a finished product''); MLC Reply September NOI Comment at 35 (updating its understanding).

[51] *See* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[52] 17 U.S.C. 115(d)(3)(E)(ii)–(iii).

[53] Conf. Rep. at 7. The legislative history also notes that ''the Register may at some point wish to consider after an appropriate rulemaking whether standardized identifiers for individuals would be appropriate, or even audio fingerprints.'' *Id.*

[54] IPI is ''[a] unique identifier assigned to rights holders with an interest in an artistic work, including natural persons or legal entities, made known to the IPI Centre. The IPI System is an international registry used by CISAC and BIEM societies.'' U.S. Copyright Office, Unclaimed Royalties Study Acronym Glossary, *https://www.copyright.gov/policy/unclaimed-royalties/glossary.pdf.*

International Standard Name Identifier (''ISNI''),[55] to the extent reasonably available to the MLC.[56] SoundExchange asserted that the ''CWR standard contemplates a much richer set of information about 'interested parties' linked to CISAC's Interested Party Information ('IPI') system, including information about songwriters and publishers at various levels,'' and so the database ''should include and make available a full set of information about interested parties involved in the creation and administration of the musical work, including shares and identifiers.'' [57] For its part, the MLC stated that it plans to include IPI and ISNI in the public database (but should not be required to do so through regulation),[58] and create its own proprietary identifier for each musical work in the database.[59]

In the subsequent April NOI, the Office sought public input on issues relating to the inclusion of unique identifiers for musical works in the public database, including whether regulations should require including IPI or ISNI, the MLC's own standard identifier, or any other specific additional standard identifiers reasonably available to the MLC.[60] In response, multiple commenters agree that the public database should include IPI and/or ISNI.[61] SONA also ''strongly encourage[d]'' the inclusion of Universal Product Code (''UPC'') because ''these codes are sometimes the only reliable way to identify the particular product for which royalties are being paid and thus ensure that royalties are correctly allocated.'' [62] The MLC reiterated its plan to include IPI and ISNI, as well as ''other unique identifiers'' and ''any other third party proprietary identifiers . . . to the extent the MLC believes they will be helpful to copyright owners.'' [63] As part of that effort, the MLC ''intend[s] to make available unique identifiers reported by the DMPs in the public database.'' [64] The MLC does not, however, intend to include the UPC field ''in the initial versions of the portal or public database (which focus on providing the data needed for matching and claiming).'' [65]

The Office finds the comments regarding IPI and ISNI persuasive in light of the statute, and thus proposes to require the public database to include IPI and/or ISNI for each songwriter, publisher, and musical work copyright owner, as well as UPC,[66] to the extent reasonably available to the MLC. The Office seeks public comment on whether IPIs and/or ISNIs for foreign collective management organizations (''CMOs'') should be required to be listed separately. Under the proposed rule, the public database must also include the MLC's standard identifier for the musical work, and to the extent reasonably available to the MLC, unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee.[67]

4. Information Related to Ownership and Control of Musical Works

By statute, the database must include information regarding the ownership of the musical work as well as the underlying sound recording, including ''the copyright owner of the work (or share thereof), and the ownership percentage of that owner,'' or, if unmatched, ''the ownership percentage for which an owner has not been identified.'' [68] The statute also requires a field called ''sound recording copyright owner,'' the meaning of which is discussed further below.

Although the MMA does not specifically call out music publishing administrators, that is, entities responsible for managing copyrights on behalf of songwriters, including administering, licensing, and collecting publishing royalties without receiving an ownership interest in such copyrights, a number of commenters urge inclusion of this information in the public musical works database.[69] As one publisher suggests, because ''[t]he copyright owner may not necessarily be the entity authorized to control, license, or collect royalties for the musical work,'' the public database should include information identifying the administrators or authorized entities who license or collect on the behalf of musical work copyright owners.[70] He also proposed that because ''a copyright owner's 'ownership' percentage may differ from that same owner's 'control' percentage,'' the public database should include separate fields for ''control'' versus ''ownership'' percentage.[71] The MLC agrees with that approach,[72] stating that ''the database should include information identifying the administrators or authorized entities who license the relevant musical work and/or collect royalties for such work on behalf of the copyright owner.'' [73]

In addition, with respect to specific ownership percentages, which are required by statute to be made publicly

[55] ISNI is ''[a] unique identifier for identifying the public identities of contributors to creative works, regardless their legal or natural status, and those active in their distribution. These may include researchers, inventors, writers, artists, visual creators, performers, producers, publishers, aggregators, and more. A different ISNI is assigned for each name used.'' U.S. Copyright Office, Unclaimed Royalties Study Acronym Glossary, *https://www.copyright.gov/policy/unclaimed-royalties/glossary.pdf.*

[56] DLC Initial September NOI Comment at 21; DLC Reply September NOI Comment Add. at A–16.

[57] SoundExchange Initial September NOI Comment at 8; *see id.* at 7–8 (''Reflecting all applicable unique identifiers in the MLC Database will allow users of the MLC Database readily to match records in the database to other databases when ISWC is not included in one or the other of the databases.'').

[58] MLC Reply September NOI Comment at 33.

[59] *Id.* at 34.

[60] 85 FR at 22574.

[61] DLC April NOI Comment at 4 n.19; SONA April NOI Comment at 4; CISAC & BIEM April NOI Comment at 2.

[62] SONA April NOI Comment at 5.

[63] MLC April NOI Comment at 9.

[64] MLC *Ex Parte* Letter #7 at 5.

[65] *Id.*

[66] The Office notes that the MLC supports including the UPC field in royalty reports to copyright owners, and in reports of usage provided by DMPs to the MLC. *See* MLC Initial September NOI Comment at App. G; MLC NPRM Comment at App. C, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001.* In addition, the MLC has maintained it will use UPC in its matching efforts. *See* MLC Letter July 13, 2020 at 7 (stating ''[a]ll of the metadata fields proposed in § 210.27(e)(1) will be used as part of the MLC's matching efforts''); *see also* 85 FR 22518, 22541 (Apr. 22, 2020) (UPC proposed in § 210.27(e)(1)).

[67] *See* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**; U.S. Copyright Office, Interim Rule, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[68] 17 U.S.C. 115(d)(3)(C)(E)(ii)–(iii). CISAC & BIEM contend that creators' percentage share should not be made publicly accessible in the database. CISAC & BIEM NPRM Comment at 2, U.S. Copyright Office Dkt. No. 2020–7, available at *https://beta.regulations.gov/document/COLC-2020-0004-0001.* The statute, however, specifically contemplates such information being made publicly available in the database. 17 U.S.C. 115(d)(3)(C)(E)(ii)–(iii).

[69] DLC Reply September NOI Comment Add. at A–16 (urging inclusion of ''all additional entities involved with the licensing or ownership of the musical work, including publishing administrators and aggregators, publishers and sub-publishers, and any entities designated to receive license notices, reporting, and/or royalty payment on the copyright owners' behalf''); ARM April NOI Comment at 2 (agreeing that ''information related to all persons or entities that own or control the right to license and/or collect royalties related to musical works in the United States should be included''). *See also* FMC April NOI Comment at 2; SONA April NOI Comment at 5–6; SoundExchange Initial September NOI Comment at 8 (observing that ''[c]ommercialization of musical works often involves chains of publishing, sub-publishing and administration agreements that determine who is entitled to be paid for use of a work,'' and that the CWR standard contemplates gathering this information, such that the MLC database should also collect and make available this information).

[70] Barker Initial September NOI Comment at 2.

[71] *Id.* at 3.

[72] MLC Reply September NOI Comment at 32 n.16.

[73] MLC April NOI Comment at 9.

available, SoundExchange raises the question of how the database should best address ''the frequent situation (particularly with new works) where the various co-authors and their publishers have, at a particular moment in time, collectively claimed more or less than 100% of a work.'' [74] Noting that it may be difficult for the MLC to withhold information regarding the musical work until shares equal 100% (the practice of other systems), it suggests the MLC ''make available information concerning the shares claimed even when they total more than 100% (frequently referred to as an 'overclaim') or less than 100% (frequently referred to as an 'underclaim').'' [75] In response, the MLC stated that it ''intends to mark overclaims as such and show the percentages and total of all shares claimed so that overclaims and underclaims will be transparent.'' [76]

Relatedly, CISAC & BIEM raise concerns about needing ''to clarify the concept of 'copyright owner,' '' as ''foreign collective management organizations (CMOs) . . . are also considered copyright owners or exclusively mandated organizations of the musical works administered by these entities,'' and thus ''CMOs represented by CISAC and BIEM should be able to register in the MLC database the claim percentages they represent.'' [77] While the MMA does not reference foreign musical works specifically, nothing in the statute indicates that foreign copyright owners should be treated differently from U.S. copyright owners under the blanket licensing regime, or prevents the MLC from seeking or including data from foreign CMOs in building the public database.[78] Where copyright ownership has been assigned or otherwise transferred to a foreign CMO or, conversely, a U.S. sub-publisher, the statute does not specify that it should be treated differently from a similarly-situated U.S. entity that has been assigned or otherwise been transferred copyright ownership.[79] The MLC has maintained that it will ''engage in non-discriminatory treatment towards domestic and foreign copyright owners, CMOs and administrators,'' [80] and that it ''intends to operate on a non-discriminatory basis, and all natural and legal persons or entities of any nationality are welcome to register their claims to works with the MLC.'' [81] In addition, the MLC appears to be planning for data collection from foreign CMOs, as evidenced by the creation of its Data Quality Initiative (DQI), which ''provide[s] a streamlined way for music publishers, administrators and foreign collective management organizations (CMOs) to compare large schedules of their musical works' data against The MLC's data . . . so that they can . . . improve the quality of The MLC's data.'' [82] According to the MLC, the DQI ''does not act as a mechanism for delivering work registrations/works data,'' but ''[m]usic publishers, administrators and foreign CMOs may use [Common Works Registration] to deliver new and updated work registrations to The MLC.'' [83]

After considering the comments, the Office concludes that to the extent reasonably available to the MLC, it will be beneficial for the database to include information related to all persons or entities that own or control the right to license and collect royalties related to musical works in the United States, and that music publishing administrator and control information would be valuable additions. Accordingly, the proposed rule requires the public database to include administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for such musical work (or share thereof) in the United States. The proposed rule would not prevent the MLC from including additional information with respect to foreign CMOs. The Office solicits comments on the proposed language, including any specific suggestions for adjustment.

With respect to the question SoundExchange raises regarding works that may reflect underclaiming and overclaiming of shares, the Office concludes that it may make sense for the MLC to retain flexibility to implement such a system as it apparently intends, and notes that the MLC's dispute resolution committee may be an appropriate forum to consider this issue further, as part of the committee's charge to establish policies and procedures related to resolution of disputes related to ownership interests in musical works.[84] As noted above, the MLC ''intends to mark overclaims as such and show the percentages and total of all shares claimed so that overclaims and underclaims will be transparent.'' [85]

5. Additional Information Related To Identifying Musical Works and Sound Recordings

Commenters proposed that the public database include various other fields to identify the musical work at issue or the sound recording in which it is embodied. With respect to musical works, some commenters pointed to fields included in the existing Common Works Registration (''CWR'') format, and supported inclusion of information relating to alternate titles for musical works,[86] whether the work utilizes samples and medleys of preexisting works,[87] and opus and catalog numbers and instrumentation of classical compositions.[88] With respect to sound recordings, commenters suggested inclusion of information relating to track duration, version, and release date of sound recording.[89]

The MLC acknowledged the merits of including these fields proposed by commenters, recognizing ''CWR as the *de facto* industry standard used for registration of claims in musical works, and intends to use CWR as its primary mechanism for the bulk electronic

[74] SoundExchange Initial September NOI Comment at 8.

[75] *Id.* at 9; *see also id.* at 15.

[76] MLC *Ex Parte* Letter #7 at 5.

[77] CISAC & BIEM April NOI Comment at 1. *See also* Japanese Society for Rights of Authors, Composers and Publishers (''JASRAC'') Initial September NOI Comment at 2 (''[A]n effective and efficient claims process needs to be established for works that are not initially matched, which will allow foreign rights owners to claim works without significant burden.'').

[78] *See* 17 U.S.C. 115.

[79] *See id.* at 101 (defining ''copyright owner'' and ''transfer of copyright ownership''); *id.* at 115.

[80] MLC *Ex Parte* Letter #7 at 6.

[81] MLC Reply September NOI Comment at 44.

[82] The MLC, Play Your Part, *https://themlc.com/play-your-part* (last visited Sept. 1, 2020).

[83] The MLC, MLC Data Quality Initiative, *https://themlc.com/sites/default/files/2020-08/2020%20-%20DQI%20One%20Pager%20Updated%208-18-20.pdf* (last visited Sept. 1, 2020).

[84] 17 U.S.C. 115(d)(3)(K).

[85] MLC *Ex Parte* Letter #7 at 5.

[86] *See* RIAA Initial September NOI Comment at 8; MLC Reply September NOI Comment at 32; ARM April NOI Comment at 3; Recording Academy April NOI Comment at 3; *see also* SONA April NOI Comment at 5–6 (contending that data supplied to the MLC via the CWR format for musical works should be in the public database).

[87] SoundExchange Initial September NOI Comment at 9; ARM April NOI Comment at 3.

[88] SoundExchange Initial September NOI Comment at 7; ARM April NOI Comment at 3.

[89] *See* MLC Reply September NOI Comment at 33, App. E (agreeing with inclusion of duration, version, and release year of the sound recording, to the extent available to the MLC); Recording Academy Initial September NOI Comment at 3 (noting such information would ''help distinguish between songs that have been recorded and released under different titles or by different artists multiple times''); RIAA Initial September NOI Comment at 6–7 (same); Recording Academy April NOI Comment at 3 (stating database should include version titles, track duration, and release date); SONA April NOI Comment at 6 (contending track duration, version, and release date should be included in the database). ARM agrees that track duration, version, and release year should be in the database, but only if such data is obtained from an authoritative source. ARM April NOI Comment at 3. RIAA recommends revising the ''sound recording name'' field to ''sound recording track title,'' or in the alternative, ''sound recording name/sound recording track title.'' RIAA Initial September NOI Comment at 10–11.

registration of musical works data.'' [90] The MLC reported plans to include alternative titles of the musical work, and for sound recordings, the track duration, version, and release date,[91] as well as additional fields ''reported to the mechanical licensing collective as may be useful for the identification of musical works that the mechanical licensing collective deems appropriate to publicly disclose.'' [92] Regarding opus and catalog numbers for classical compositions, the MLC maintains that it ''is working with DDEX to determine if it is possible or appropriate to add Opus Number and (Composer) Catalogue Number to the data specifications.'' [93] Regarding whether the work utilizes samples and medleys of preexisting works, the MLC contends that ''[b]ecause medleys and musical works that sample other musical works are unique derivative copyrighted works, each will be included in the database as a unique composition,'' and that such an approach addresses SoundExchange's concern because it will ''treat[ ] each medley or work that incorporates a sample as a separate musical work, as to which ownership will be separately claimed and identified.'' [94]

Given the consensus of comments, the proposed rule requires the MLC to include the following fields in the public database, to the extent reasonably available to the MLC: Alternate titles for musical works, opus and catalog numbers of classical compositions, and track duration,[95] version, and release date of sound recordings. The Office has issued an interim rule requiring digital music providers to report the actual playing time as measured from the sound recording file to the MLC,[96] which the Office expects to be the value displayed in the public musical works database. Finally, the proposed rule mirrors the statute by requiring the public database to include, to the extent reasonably available to the mechanical licensing collective, other non-confidential information commonly used to assist in associating sound recordings with musical works (for matched musical works), and for unmatched musical works, other non-confidential information commonly used to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works.[97]

6. Performing Rights Organization Affiliation

In response to the September NOI, a few commenters maintained that the public database should include performing rights organization (''PRO'') affiliation, with MIC Coalition asserting that ''[a]ny data solution must not only encompass mechanical rights, but also provide information regarding public performance rights, including PRO affiliation and splits of performance rights.'' [98]

By contrast, the MLC and FMC raised concerns about including and maintaining PRO affiliation in the public database.[99] The largest PROs, The American Society of Composers, Authors, and Publishers (''ASCAP'') and Broadcast Music, Inc. (''BMI''), similarly objected that because ''music performing rights organizations such as BMI and ASCAP all have comprehensive databases on musical works ownership rights, and these databases are publicly available,'' so ''administration of data with respect to the licensing of public performing rights does not require government intervention.'' [100]

After evaluating these comments, in the April NOI the Office tentatively concluded against requiring PRO affiliation in the public database, noting that ''[b]ecause the MMA explicitly restricts the MLC from licensing performance rights, it seems unlikely to be prudent or frugal to require the MLC to expend resources to maintain PRO affiliations for rights it is not permitted to license.'' [101] In response, the DLC asked the Office to reconsider and include PRO affiliation in the public database.[102] The MIC Coalition commented that ''[i]ncorporating PRO information into the musical works database . . . will foster a wide range of innovations in music licensing,'' [103] and that the Office should not view ''the joint database proposed by ASCAP and BMI as a viable alternative to the one that's currently being developed by the MLC.'' [104] But CISAC &, BEIM agree ''that there is no need for the MLC to include and maintain the PRO's performing right information in the database,'' [105] and FMC finds the ''Office's tentative conclusion against requiring the MLC to include PRO affiliation in its database is sound.'' [106] For its part, the MLC contends that it ''should be afforded the opportunity to focus on its main priority of a robust and fulsome mechanical rights database,'' and not include PRO affiliation, but that ''[i]f, at some time in the future, the MLC has the capacity and resources to also incorporate performance rights information, it may undertake this task . . .'' [107]

Having considered these comments, the statutory text, and legislative history, the Office concludes that the mechanical licensing collective should not be required to include PRO affiliation in the public database.[108] As previously noted by the Office, this conclusion does not inhibit PRO access or use of the database for their own efforts, and explicitly permits bulk access for a fee that does not exceed the MLC's marginal cost to provide such access; nor does it restrict the MLC from

[90] MLC Reply September NOI Comment at 38.

[91] *Id.* at App. E; MLC April NOI Comment at 10.

[92] MLC Reply September NOI Comment at App. E.

[93] MLC *Ex Parte* Letter #7 at 5.

[94] *Id.*

[95] The proposed rule uses the term ''playing time.'' *See* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[96] *Id.*

[97] 17 U.S.C. 115(d)(3)(E)(ii)(IV)(bb), (iii)(I)(dd)–(ee).

[98] MIC Coalition Initial September NOI Comment at 2. *See* DLC Initial September NOI Comment at 20 (suggesting that including PRO affiliation ''will ensure that the [public] database is fully usable, including as a resource for direct licensing activities''); *see also* Barker Initial September NOI Comment at 8–9.

[99] *See* MLC Reply September NOI Comment at 36 (pointing out that its ''primary responsibility is to engage in the administration of mechanical rights and to develop and maintain a mechanical rights database,'' and that ''gather[ing], maintain[ing], updat[ing] and includ[ing] . . . performance rights information—which rights it is not permitted to license—would require significant effort which could imperil [its] ability to meet its statutory obligations with respect to mechanical rights licensing and administration by the [license availability date]''); FMC Reply September NOI Comment at 3 (''[I]t's difficult to see how including PRO information in the MLC database could work—as the MLC won't be paying PROs, it's hard to envision what would incentivize keeping this data accurate and authoritatively up to date.'').

[100] ASCAP & BMI Reply September NOI Comment at 2.

[101] 85 FR at 22576; 17 U.S.C. 115(d)(3)(C)(iii) (limiting administration of voluntary licenses to ''only [the] reproduction or distribution rights in musical works for covered activities'').

[102] DLC April NOI Comment at 3–4.

[103] MIC Coalition April NOI Comment at 3.

[104] *Id.* at 2.

[105] CISAC & BIEM April NOI Comment at 3.

[106] FMC April NOI Comment at 2.

[107] MLC April NOI Comment at 10.

[108] In a related rulemaking, the Office has declined to require musical work copyright owners to provide information related to performing rights organization affiliation in connection with the statutory obligation to undertake commercially reasonably efforts to deliver sound recording information to the MLC. U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**. *See also* 17 U.S.C. 115(d)(3)(E)(iv).

optionally including such information.[109]

7. Historical Data

In response to the September NOI, SoundExchange asserted that the public database should ''maintain and make available historical interested party information so it is possible to know who is entitled to collect payments for shares of a work both currently and at any point in the past.'' [110] The DLC also proposed that the public database include ''information regarding each entity in the chain of copyright owners and their agents for a particular musical work'' as well as ''relational connections between each of these entities for a particular musical work.'' [111] The MLC sought clarity about the DLC's specific proposal, suggesting ''[i]t is unclear whether the DLC . . . is referring to the entire historical chain of title for each musical work. If so, the MLC objects that ''such information is voluminous, burdensome to provide and maintain, and in this context unnecessary and must not be required.'' [112] The MLC stated, however, that it intends to maintain information in its database about ''each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities.'' [113] After considering these comments, the Copyright Office tentatively agreed with the MLC's approach to focus on current relationships, but welcomed further public input and noted that it did not envision language *prohibiting* the MLC from providing such historical information.[114]

In response to the April NOI, SoundExchange reiterated its request for the public database to include historical information, acknowledging that it ''seems reasonable'' for the MLC not to ''go out of its way to collect information about entitlement to payment for times *before* the license availability date,'' but discouraging an approach where ''the MLC may discard or not make publicly available information about entitlement to payment that . . . applies to times after the license availability date, . . . [because] in some cases (such as where a service provider makes a significantly late payment or distribution is delayed because the copyright owners have not agreed among themselves concerning ownership shares) the MLC may not be able to distribute royalties until long after the usage occurred.'' [115] CISAC & BIEM, FMC, and SONA agree that historical ownership information should be in the public database, noting that ownership of musical works changes over time.[116]

For its part, the MLC reaffirmed its intention to ''maintain information about each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities,'' and to ''maintain at regular intervals historical records of the information contained in the database.'' [117] The MLC also clarified that it ''will maintain an archive of data provided to it after the license availability date ('LAD') and that has subsequently been updated or revised (*e.g.,* where there is a post-LAD change in ownership of a share of a musical work), and the MLC will make this historic information available to the public.'' [118] The MLC contends that ''it should be permitted to determine, in consultation with its vendors, the best method for maintaining and archiving historical data to track ownership and other information changes in its database.'' [119]

Having carefully considered this issue, the Office proposes that the MLC shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time. The proposed rule adopts the MLC's request for flexibility as to the most appropriate method for archiving and maintaining such historical data to track ownership and other information changes in the database. As previously noted by the Office, the MLC must maintain all material records of the operations of the mechanical licensing collective in a secure and reliable manner, and such information will also be subject to audit.[120]

8. Terminations

Title 17 allows, under certain circumstances, authors or their heirs to terminate an agreement that previously granted one or more of the author's exclusive rights to a third party.[121] In response to the September NOI, one commenter suggested that to the extent terminations of musical work grants have occurred, the public database should include ''separate iterations of musical works with their respective copyright owners and other related information, as well as the appropriately matched recording uses for each iteration of the musical work, and to make clear to the public and users of the database the appropriate version eligible for future licenses.'' [122] Separately, as addressed in a parallel rulemaking, the MLC asked that the Office require digital music providers to include server fixation dates for sound recordings, contending that this information will be helpful to its determination whether particular usage of musical works is affected by the termination of grants under this statutory provision.[123] The DLC objected to this request.[124]

In the April NOI, the Office sought public input on issues that should be considered relating to whether termination information should be included in the public database.[125] The DLC, SGA, and SONA support including information concerning the termination of grants of rights by copyright creators in the public database.[126] By contrast, the MLC contends that it ''should not be required to include in the public database information regarding statutory termination of musical works per se.'' [127] The Recording Academy, expressing concern that the Office's parallel rulemaking involving server fixation dates for sound recordings ''could have a substantive impact on the termination rights of songwriters,'' [128]

[109] 17 U.S.C. 115(d)(3)(E)(v); 85 FR at 22576. *See* Barker Initial September NOI Comment at 9; SONA April NOI Comment at 6 (''While SONA does not believe this data should be mandatory, we also do not think that the rule should prohibit a songwriter from publicly listing PRO affiliation if he or she believes that it could be important identifying information.'').

[110] SoundExchange Initial September NOI Comment at 10.

[111] DLC Initial September NOI Comment at 20.

[112] MLC Reply September NOI Comment at 34.

[113] *Id.*

[114] 85 FR at 22576.

[115] SoundExchange April NOI Comment at 4 (emphasis added). *See id.* at 4–5 (''To pay the proper payee for the time when usage occurred, the MLC will need to know who is entitled to receive royalty payments for all times after the license availability date.'').

[116] CISAC & BIEM April NOI Comment at 3; FMC April NOI Comment at 2; SONA April NOI Comment at 9.

[117] MLC April NOI Comment at 12.

[118] MLC *Ex Parte* Letter #7 at 4.

[119] MLC April NOI Comment at 12.

[120] 85 FR at 22576; 17 U.S.C. 115(d)(3)(M)(i); *id.* at 115(d)(3)(D)(ix)(II)(aa).

[121] 17 U.S.C. 203, 304(c), 304(d).

[122] Barker Initial September NOI Comment at 4.

[123] MLC Reply September NOI Comment at 19, App. at 10; *see also* 85 FR at 22532–33.

[124] DLC *Ex Parte* Letter Feb. 14, 2020 (''DLC *Ex Parte* Letter #1'') at 3; DLC *Ex Parte* Letter #1 Presentation at 15; DLC *Ex Parte* Letter Feb. 24, 2020 at 4; DLC *Ex Parte* Letter Mar. 4, 2020 at 5.

[125] 85 FR at 22576.

[126] DLC April NOI Comment at 4 n.19; SGA April NOI Comment at 8; SONA April NOI Comment at 2.

[127] MLC April NOI Comment at 10.

[128] Recording Academy April NOI Comment at 3.

asks the Office to ''set aside any issue related to termination rights and the MLC until it conducts a full and thorough examination of the implications . . . for songwriters and other authors, including an opportunity for public comment.'' [129]

Having considered these comments, the statutory text, and legislative history, the Office takes the position that the mechanical licensing collective should not be required to include termination information in the public database. This conclusion does not restrict the MLC from optionally including such information. In addition, the Office notes that the MLC has agreed to include information regarding administrators that license musical works and/or collect royalties for such works,[130] as well as information regarding ''each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities,'' [131] which presumably should include updated ownership information that may be relevant for works that are being exploited post-exercise of the termination right.

9. Data Provenance

In response to the September NOI, the DLC maintained that if the public database includes third-party data, ''it should be labeled as such.'' [132] The DLC provided proposed language suggesting that for musical work copyright owner information, the database should indicate ''whether the ownership information was received directly from the copyright owner or from a third party.'' [133] SoundExchange agreed, stating that the public database ''should identify the submitters of the information in it, because preserving that provenance will allow the MLC and users of the MLC to make judgments about how authoritative the information is.'' [134] Others commenters noted that for sound recordings, first-hand data is more likely to be accurate.[135]

In the April NOI, the Office noted that while issues related to data sourcing, confidence in data quality, accurate copyright ownership information, and agency or licensing arrangements, are important, they can be nuanced, and so ''the MLC may be better-suited to explore the best way to promote accuracy and transparency in issues related to data provenance without such regulatory language, including through the policies and practices adopted by its dispute resolution and operations committees, and by establishing digital accounts through which copyright owners can view, verify, or adjust information.'' [136] The Office sought further public input on any issues that should be considered relating to the identification of data sourcing in the public database, including whether (and how) third-party data should be labeled.[137]

In response, the DLC asked the Office to reconsider and include data provenance information in database, stating that ''users of the database should have the ability to consider whatever information the MLC can obtain from copyright owners, and make their own judgments as to its reliability based on the MLC's identification of the information's source.'' [138] ARM, FMC, and CISAC & BIEM agree that the public database should include data provenance information,[139] although CISAC & BIEM and SONA contend that regulations requiring such information are not necessary.[140] For its part, the MLC ''agrees with the Office's tentative conclusion that the MLC and its committees are better suited to establish policies and practices . . . to meet the goal of improving data quality and accuracy,'' [141] and that ''[t]he MLC should be given sufficient flexibility to determine the best and most operationally effective way to ensure the accuracy and quality of the data in its database, rather than requiring it to identify the source of each piece of information contained therein.'' [142] The MLC also stated that it ''intends to show the provenance of each row of sound recording data, including both the name of and DPID for the DMP from which the MLC received the sound recording data concerned,'' and that it ''intends to put checks in place to ensure data quality and accuracy.'' [143] For musical works information, the MLC maintains that it ''will be sourced from copyright owners.'' [144]

After carefully reviewing these comments, the Office agrees that the MLC should be granted some discretion on how to display data provenance information in the public database. Because the commenters generally supported the MLC's intent to source musical works information from copyright owners, data provenance issues appear to be especially relevant to sound recording information in the public database. This is particularly true given that the MLC intends to populate sound recording information in the public database from reports of usage, as opposed to using a single authoritative source (discussed below). Accordingly, the proposed rule states that the MLC must display data provenance information for sound recording information in the public database. The Office seeks public input on this aspect of the proposed rule.

B. Sound Recording Information and Disclaimers or Disclosures in the Public Musical Works Database

1. ''Sound Recording Copyright Owner'' Information

In response to the September NOI, RIAA and individual record labels expressed concern about which information will populate and be displayed to satisfy the statutory requirement to include ''sound recording copyright owner'' (SRCO) in the public musical works database.[145] Specifically, RIAA explained that under current industry practice, digital music providers send royalties pursuant to information received from record companies or others releasing recordings to DMPs ''via a specialized DDEX message known as the ERN (or Electronic Release Notification),'' which is ''typically populated with information about the party that is entitled to receive royalties (who may or

[129] *Id.*

[130] MLC April NOI Comment at 9.

[131] MLC Reply September NOI Comment at 34.

[132] DLC Initial September NOI Comment at 20.

[133] DLC Reply September NOI Comment at Add. A–15–16.

[134] SoundExchange Initial September NOI Comment at 10–11.

[135] The American Association of Independent Music (''A2IM'') & RIAA Reply September NOI Comment at 2 (asserting MLC should be required to obtain its sound recording data from a single authoritative source); Jessop Initial September NOI Comment at 3 (''The MLC should obtain sound recording information from as close to the source as possible. In practice this means from the record label or someone directly or indirectly authorized to manage this information for them.'').

[136] 85 FR at 22576.

[137] *Id.*

[138] DLC April NOI Comment at 4.

[139] ARM April NOI Comment at 3 (contending that the public database should indicate ''which data was provided to the MLC by the actual copyright owner or its designee, which was provided by a DMP and which was provided some other third party''); FMC April NOI Comment at 2 (agreeing that public database ''should include provenance information, not just because it helps allow for judgments about how authoritative that data is, but because it can help writers and publishers know where to go to correct any bad data they discover''); CISAC & BIEM April NOI Comment at 3 (''Submitters of information should be identified, and when the information is derived from copyright owners (creators, publishers, CMOs, etc.), it should be labelled, and it should prevail over other sources of information.'').

[140] CISAC & BIEM April NOI Comment at 3 (maintaining that ''any issues should be resolved through the MLC's dispute resolution policy''); SONA April NOI Comment at 8.

[141] MLC April NOI Comment at 11.

[142] *Id.* at 12.

[143] MLC *Ex Parte* Letter #7 at 4.

[144] *Id.* at 2.

[145] 17 U.S.C. 115(d)(3)(E)(ii)(IV)(bb), (iii)(I)(dd).

may not be the actual legal copyright owner), because that is the information that is relevant to the business relationship between record labels and DMPs.'' [146] In short, information in ''the ERN message is not meant to be used to make legal determinations of ownership.'' [147] RIAA noted the potential for confusion stemming from a field labelled ''sound recording copyright owner'' in the public database being populated by information taken from the labels' ERN messages—for both the MLC (*i.e.,* the MLC could ''inadvertently misinterpret or misapply the SRCO data''), and users of the free, public database (*i.e.,* they could mistakenly assume that the so-called ''sound recording copyright owner'' information is authoritative with respect to ownership of the sound recording).[148] Separate but relatedly, SoundExchange noted that it ''devotes substantial resources'' to tracking changes in sound recording rights ownership, suggesting that inclusion of a SRCO field ''creates a potential trap for the unwary.'' [149] A2IM & RIAA and Sony suggested that three fields—DDEX Party Identifier (DPID), LabelName, and PLine—may provide indicia relevant to determining sound recording copyright ownership.[150]

In the April NOI, the Copyright Office sought public comment regarding which data should be in the public database to satisfy the statutory requirement, including whether to require inclusion of multiple fields to lessen the perception that a single field contains definitive data regarding sound recording copyright ownership information.[151] ARM states that it does not object ''to a regulation that requires the MLC to include [DDEX Party Identifier (DPID), LabelName, and PLine] in the Database, provided the fields are each labeled in a way that minimizes confusion and/or misunderstanding,'' as ''this will lessen the perception that a single field contains definitive data regarding sound recording copyright ownership information.'' [152] The MLC ''has no issue with including LabelName and PLine information in the public database to the extent the MLC receives that information from the DMPs,'' but expressed concern about including DPID because it ''does not identify sound recording copyright owner, but rather, the sender and/or recipient of a DDEX-formatted message.'' [153] The DLC states that LabelName and Pline ''are adequate on their own,'' as DPID ''is not a highly valuable data field,'' and contends that the burden of converting DPID numerical codes into parties' names (to address ARM's concern about displaying the numerical identifier) outweighs any benefit of including DPID in the public database.[154] The Recording Academy, although maintaining that ''DDEX ERN information is an important source of reliable and authoritative data about a sound recording,'' contends that ''many of the fields serve a distinct purpose in the digital supply chain and do not satisfy the 'sound recording copyright owner' field required in the MLC database.'' [155]

Having considered all relevant comments on this issue, it seems that DPID does not have as strong a connection to the MLC's matching efforts or the mechanical licensing of musical works as the other fields identified as relevant to the statutory requirement to list a sound recording copyright owner. In light of this, and the commenters' concerns, the proposed rule would not require the MLC to include DPID in the public database. In case the MLC later decides to include DPID in the public database, given the confidentiality considerations raised, the proposed rule states that the DPID party's name may be displayed, but not the numerical identifier. In addition, because industry practice has not included a single data field to provide definitive data regarding sound recording copyright ownership, to

[146] RIAA Initial September NOI Comment at 2. Although the RIAA's initial September NOI comments suggested that the ERN feed included a field labeled sound recording copyright owner (SRCO), upon reply, it clarified that there is no such specific field. *See* A2IM & RIAA Reply September NOI Comment at 8 n.5.

[147] RIAA Initial September NOI Comment at 2.

[148] *Id.* at 3; *see id.* (''If database users seek out and enter into sound recording licenses with the wrong parties and/or make payments to the wrong parties—because they misunderstand what the data in the SRCO column of the MLC database *actually* represents—that would negatively impact our member companies and the artists whose recordings they own and/or exclusively license.''). Those concerns were echoed in *ex parte* meetings with individual record labels. Universal Music Group (''UMG'') explained that ''actual copyright ownership is irrelevant'' in the digital supply chain, as ''DMPs only need to know who to pay and, maybe, who to call,'' whereas record companies separately track copyright ownership information. UMG & RIAA *Ex Parte* Letter Dec. 9, 2019 at 2. UMG suggested that the MLC's inclusion of a field labeled ''sound recording copyright owner'' might confuse relations between the actual copyright owner and the record label conveying information to the DMP, where the label is functioning as a non-copyright owner distributor through a licensing or press and distribution (P&D) arrangement. UMG & RIAA *Ex Parte* Letter at 2–3. Sony Music (''Sony'') expressed similar concerns, suggesting that the Office's regulations specify how the ''sound recording copyright owner'' line in the public database should be labeled or defined to minimize confusion. Sony & RIAA *Ex Parte* Letter Dec. 9, 2019 at 1–2.

[149] SoundExchange Initial September NOI Comment at 11–12.

[150] Sony & RIAA *Ex Parte* Letter at 2 (noting that ''DIY artists and aggregators serving that community'' may be most likely to populate the DPID field); A2IM & RIAA Reply September NOI Comment at 8–10 (identifying DPID, LabelName, and PLine fields in relation to sound recording copyright owner information). The LabelName represents the ''brand under which a Release is issued and marketed. A Label is a marketing identity (like a MusicPublisher's 'Imprint' in book publishing) and is not the same thing as the record company which controls it, even if it shares the same name. The control of a Label may move from one owner to another.'' Digital Data Exchange (''DDEX''), DDEX Data Dictionary, *http://service.ddex.net/dd/ERN411/dd/ddex_Label.html* (last visited Sept. 1, 2020). As noted by A2IM & RIAA, ''PLine'' is ''[a] composite element that identifies the year of first release of the Resource or Release followed by the name of the entity that owns the phonographic rights in the Resource or Release. . . . In the case of recordings that are owned by the artist or the artist's heirs but are licensed to one of [their] member companies, the PLine field typically lists those individuals' names, even though they generally are not actively involved in commercializing those recordings.'' A2IM & RIAA Reply September NOI Comment at 9 (citing Music Business Association and DDEX, *DDEX Release Notification Standard Starter Guide for Implementation* 28 (July 2016), *https://kb.ddex.net/download/attachments/327717/MusicMetadata_DDEX_V1.pdf*). DPID ''is an alphanumeric identifier that identifies the party delivering the DDEX message,'' and ''is also generally the party to whom the DMP sends royalties for the relevant sound recording.'' *Id.* at 8.

[151] 85 FR at 22577.

[152] ARM April NOI Comment at 4. A2IM & RIAA initially stated that ''[b]ecause the PLine party is, in many cases, an individual who would not want to be listed in a public database and is often not the party who commercializes the recording, the regulations should prohibit that party name from appearing in the public-facing database.'' A2IM & RIAA Reply September NOI Comment at 9. The Office understands that ARM, of which A2IM and RIAA are members, does not object to PLine being displayed in the public musical works database. For DPID, the Office also understands that ARM does not object to including the DPID party's name in the public database, but does ''object to the numerical identifier being disclosed, as the list of assigned DPID numbers is not public and disclosing individual numbers (and/or the complete list of numbers) could have unintended consequences.'' ARM NPRM Comment at 10, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001.*

[153] MLC April NOI Comment at 13. *See also* Digital Data Exchange (''DDEX'') NPRM Comment at 1–2, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001* (''[T]he DPID, although a unique identifier and in relevant instances an identifier of ''record companies'', does not identify sound recording copyright owners. It only identifies the sender and recipient of a DDEX formatted message and, in certain circumstances, the party that the message is being sent on behalf of.'').

[154] DLC Letter July 13, 2020 at 10 (stating that while converting the DPID numerical code into the party's actual name of reporting purposes ''is conceptually possible'' for DMPs, ''it would require at least a substantial effort for some services'' (around one year of development), and ''would be an impracticable burden for some others'').

[155] Recording Academy April NOI Comment at 3. *Compare* ARM April NOI Comment at 5 (stating ''there is no single field in the ERN that can simultaneously tell the public who owns a work, who distributes the work *and* who controls the right to license the work'').

satisfy the statute's requirement to include information regarding ''sound recording copyright owner,'' the proposed rule requires the MLC to include data for both LabelName and PLine in the public database, to the extent reasonably available.[156] In light of numerous comments expressing similar views on this subject, the Office tentatively concludes that inclusion of these two fields would adequately satisfy the statutory requirement by establishing an avenue for the MLC to include relevant data that is transmitted through the existing digital supply chain, and thus reasonably available for inclusion in the public database.

As for labeling these fields, the MLC contends that ''the names or labels assigned to these fields in the public database is not ultimately the MLC's decision,'' claiming that ''it is ultimately at DDEX's discretion.'' [157] The Office strongly disagrees with this notion. While DDEX ''standardizes the formats in which information is represented in messages and the method by which the messages are exchanged'' ''along the digital music value chain'' [158] (*e.g.,* between digital music providers and the MLC), DDEX does not control the public database or how information is displayed and/or labeled in the public database. While the Office wishes to afford the MLC some flexibility in administering the public database, and thus tentatively declines to regulate the precise names of these fields,[159] due to the comments noted above, the proposed rule precludes the MLC from labeling either the PLine or LabelName field ''sound recording copyright owner,'' and requires the MLC to consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion.[160] The Office appreciates the MLC's intention to ''make available in the database a glossary or key, which would include field descriptors.'' [161] The Office specifically encourages the MLC to consider ARM's labeling suggestions with respect to the PLine and LabelName fields.

2. Disclaimer

Relatedly, the Office received persuasive comments requesting that the MLC be required to include a conspicuous disclaimer regarding sound recording copyright ownership information in its database. For example, in response to the September NOI, RIAA suggested that the MLC should be required to ''include a clear and conspicuous disclaimer on the home screen'' of the public database that it does not purport to provide authoritative information regarding sound recording copyright owner information.[162] A2IM & RIAA, CISAC & BIEM, and SoundExchange agreed that the public database should display such a disclaimer.[163] And the MLC itself agreed to display a disclaimer that its database should not be considered an authoritative source for sound recording information.[164] Subsequent comments in response to the April NOI similarly pushed for such a disclaimer,[165] and the MLC reiterated its intention to include a disclaimer that the public database is not an authoritative source for sound recording information.[166] Both ARM and the Recording Academy further suggested that the disclaimer include a link to SoundExchange's ISRC Search database (located at *https://isrc.soundexchange.com*).[167]

In light of the comments received urging a disclaimer, and the fact that no single field may indicate sound recording copyright ownership, the proposed rule requires the MLC to include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording information, and explains the labeling of information in the database related to sound recording copyright owner, including the ''LabelName'' and ''PLine'' fields.[168] The proposed rule would not require that the disclaimer include a link to SoundExchange's ISRC Search database, though it certainly does not prohibit such inclusion.

3. Populating and Deduping Sound Recording Information in the Public Musical Works Database

The statute requires the MLC to ''establish and maintain a database containing information relating to musical works (and shares of such works) and, to the extent known, . . . the sound recordings in which the musical works are embodied.'' [169] As noted, for both matched and unmatched musical works, the public database must include, to the extent reasonably available to the MLC, ''identifying information for sound recordings in which the musical work is embodied.'' [170]

Throughout this rulemaking and parallel rulemakings, commenters have expressed concern about the MLC using non-authoritative source(s) to populate the sound recording information in the public database. For example, ARM expressed concern about ''ensuring that all sound recording data that ultimately appears in the MLC's public-facing database is as accurate as possible and is taken from an authoritative source (*e.g.,* SoundExchange),'' [171] and that

[156] As the MMA also requires ''sound recording copyright owner'' to be reported by DMPs to the mechanical licensing collective in monthly reports of usage, the Office has separately issued an interim rule regarding which information should be included in such reports to satisfy this requirement. Because industry practice has not included a single data field to provide definitive data regarding sound recording copyright ownership, that rule proposes DMPs can satisfy this obligation by reporting information in the following fields: LabelName and PLine. *See also* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[157] MLC *Ex Parte* Letter #7 at 4.

[158] DDEX NPRM Comment at 1, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001.*

[159] *See* ARM April NOI Comment at 5 (suggesting that ''LabelName'' be described as ''U.S. Releasing Party (if available),'' and that ''PLine'' be described as ''Sound Recording Owner of Record (who may not be the party that commercializes the recording; note that this party may change over time)'').

[160] The same limitation applies if the MLC elects to include DPID information.

[161] MLC *Ex Parte* Letter #7 at 4.

[162] RIAA Initial September NOI Comment at 10.

[163] A2IM & RIAA Reply September NOI Comment at 9 (urging Office to require ''a strong, prominent disclaimer'' to ''make[] it explicitly clear that the database does not purport to provide authoritative information about sound recording copyright ownership''); CISAC & BIEM Reply September NOI Comment at 8 (''CISAC and BIEM also encourage the use of appropriate disclaiming language in regard to the content of the database, where necessary.''); SoundExchange Initial September NOI Comment at 12 (''At a minimum, the MLC Database should at least include a disclaimer that the MLC Database is not an authoritative source of sound recording rights owner information.'').

[164] MLC Reply September NOI Comment at 36–37.

[165] ARM April NOI Comment at 6–7; Recording Academy April NOI Comment at 3–4.

[166] MLC April NOI Comment at 13.

[167] ARM April NOI Comment at 6–7; Recording Academy April NOI Comment at 3–4. The RIAA has designated SoundExchange as the authoritative source of ISRC data in the U.S. ARM *Ex Parte* Letter July 27, 2020 at 2; RIAA, *RIAA Designates SoundExchange as Authoritative Source of ISRC Data in the United States* (July 22, 2020), *https://www.riaa.com/riaa-designates-soundexchange-as-authoritative-source-of-isrc-data-in-the-united-states/.*

[168] *See* Recording Academy April NOI Comment at 3 (''support[ing] the use of a disclaimer that would properly contextualize the use of 'sound recording copyright owner' and safeguard the legal rights of artists'').

[169] 17 U.S.C. 115(d)(3)(E)(i).

[170] *Id.* at 115(d)(3)(E)(ii)(IV)(bb), (iii)(I)(dd).

[171] ARM NPRM Comment at 6, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001. See also* SoundExchange Initial September NOI Comment at 12 (''[T]he MLC is not in a good position to capture or track changes in sound recording rights ownership, because it does not have a direct relationship with sound recording copyright owners like SoundExchange does, nor does it have an ongoing business need to ensure that sound recording rights information is always accurate and up-to-date.''); Jessop Initial September

''the MLC not propagate non-authoritative sound recording data in its public-facing database and outward reporting.'' [172] Similarly, ARM members RIAA and A2IM contend that ''the MLC should be required to build its database from authoritative data that is obtained from copyright owners or their designated data providers,'' a consideration echoed by other commenters representing sound recording interests.[173] Though raised in the context of data collection by DMPs, as opposed to populating the public database, the DLC agrees with having the MLC obtain sound recording information from a single, authoritative source, such as SoundExchange, because ''[w]ith record labels acting as the primary and authoritative source for their own sound recording metadata, the MLC could then rely on only a single (or limited number of) metadata field(s) from licensees' monthly reports of usage to look up the sound recordings in the MLC database (*e.g.,* an ISRC or digital music provider's unique sound recording identifier that would remain constant across all usage reporting).'' [174] The DLC further maintains that ''the MLC's suggestion to obtain disparate sound recording data from every digital music provider and significant non-blanket licensee is far less efficient than obtaining it from a single source like SoundExchange.'' [175]

By contrast, the MLC asserts that ''[t]hird-party data from SoundExchange or another 'authoritative source' cannot, by definition, be 'authoritative' as to particular sound recordings made available through the DMP's service, unless and until the DMP compares the third-party data to its own data to match the third-party sound recording database to the DMP's database of tracks streamed.'' [176] While the MLC has previously stated that it ''intends to use SoundExchange as a valuable source of information for sound recording identifying information'' (but that a regulation ''requiring SoundExchange as a single source would be . . . unnecessarily limiting'' [177]), the MLC also contends that ''much of the information [it] believes is necessary to build and maintain a useful database is consistent with the data the MLC believes should be provided by the DMPs in their [notices of license], through their data collection efforts, and through their usage reporting (including the reports of usage).'' [178] The MLC maintains that ''receiving from DMPs the unaltered sound recording data they originally received from the corresponding sound recording owners [in reports of usage] would both improve the MLC's ability to match musical works to sound recordings, as the MLC would have fewer metadata matches to make (*i.e.,* between musical works and the unaltered data for an associated sound recordings), and would better allow the MLC to 'roll up' sound recording data under entries that are more likely to reflect more 'definitive' versions of that sound recording data (*i.e.,* the unaltered data originally provided by the sound recording owners).'' [179] The MLC further states that ''for uses where the sound recording has not yet been matched to a musical work, the sound recording data received from DMPs will be used to populate the database, as that is the only data the MLC will have for such uses,'' and that ''[f]or uses where the sound recording has been matched but all musical work ownership shares have not been claimed and are not known, the database will contain the sound recording data received from DMPs, organized and displayed under each individual musical work to which the MLC matched that sound recording usage data.'' [180] For ''sound recordings that are matched to a specific musical work and for sound recordings that are unmatched, the MLC intends to include sound recording information in the disparate forms received from the DMPs that provided that information.'' [181]

Having carefully considered this issue in light of the statute and legislative history, the Office invites the MLC to take a step back as it assesses how it will populate sound recording information in the public database. Although the Office has, separately, adopted an interim rule that provides a method for the MLC to generally receive certain data fields in unaltered form that it has identified as being useful for matching, it is not foregone that the same demands must drive display considerations with respect to the public database, particularly for matched works.[182] First, while perhaps not authoritative (hence the use of the disclaimer, as discussed above), the Office believes the MMA anticipates a general reliability of the sound recording information appearing in the public database.[183] The MLC's observation that data from SoundExchange is not ''authoritative'' with respect to usage of recordings, because only reports of usage provide evidence as to which sound recordings were actually streamed through a DMP's service, does not seem dispositive. While it may be true that reports of usage are the better indicators of which sound recordings were actually streamed, the public database is not necessarily meant to serve that same function.[184] The statute requires the public database to contain information relating to ''the sound recordings in which the musical works are embodied,'' which can reasonably be read as information to *identify* the sound recordings in which musical works are embodied, regardless of whether they were streamed pursuant to

NOI Comment at 3 (''The MLC should obtain sound recording information from as close to the source as possible. In practice this means from the record label or someone directly or indirectly authorized to manage this information for them.''). As noted above, RIAA recently designated SoundExchange as the authoritative source of ISRC data in the United States. ARM *Ex Parte* Letter July 27, 2020 at 2; RIAA, *RIAA Designates SoundExchange as Authoritative Source of ISRC Data in the United States* (July 22, 2020), *https://www.riaa.com/riaa-designates-soundexchange-as-authoritative-source-of-isrc-data-in-the-united-states/.*

[172] ARM *Ex Parte* Letter July 27, 2020 at 1. *See also* ARM April NOI Comment at 3 (''[I]t is critical that the Database not disseminate unverified data, whether received from DMPs in their reports of usage or from other third-party sources.'').

[173] A2IM & RIAA Reply September NOI Comment at 3. *See* SoundExchange Initial September NOI Comment at 4 (noting its ''firm determination not to mix potentially suspect data provided by licensees with the authoritative data provided by rights owners in its repertoire database''). *See also* Music Reports Initial September NOI Comment at 3 (''[A] row of sound recording metadata provided by one DMP in relation to a discrete sound recording may differ from the row of metadata a second DMP provides in relation to the same sound recording, with additional or different data fields or identifiers unique to that DMP.'').

[174] DLC Reply September NOI Comment at 10.

[175] DLC *Ex Parte* Letter Mar. 4, 2020 at 2.

[176] MLC NPRM Comment at 11–12, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001.*

[177] MLC Reply September NOI Comment at 11 n.7.

[178] MLC Initial September NOI Comment at 24.

[179] MLC *Ex Parte* Letter #7 at 2.

[180] *Id.*

[181] *Id.* at 3.

[182] U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**. For some fields, the interim rule provides for a one-year transition period for DMPs that are not currently set up to provide this data unaltered from what was provided by the sound recording copyright owner or licensor.

[183] *See* SoundExchange Initial September NOI Comment at 5 (''[T]he success of the MLC Database . . . will depend on it having sufficiently comprehensive data of sufficiently high quality that it will be respected and used throughout the industry.''); RIAA Initial September NOI Comment at 11 (asserting that record labels ''anticipate making frequent use of the MLC database'').

[184] *See* SoundExchange NPRM Comment at 5, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001* (''Reporting by digital service providers should be viewed primarily as a means of identifying the works used by the service, rather than as a way for the MLC to learn about ownership and other characteristics of those works.'').

disparate attendant metadata or not.[185] As RIAA explains, ''member labels vary the metadata they send the different DMPs in order to meet the services' idiosyncratic display requirements,'' which if passed to the MLC even in unaltered form, would result in the MLC ''still receiv[ing] conflicting data that it will have to spend time and resources reconciling.'' [186] Populating certain fields in the public database from reports of usage instead of from an authoritative, normalized source thus may increase the likelihood of inaccurate or confusing sound recording information in the database. Second, the MLC must issue monthly royalty reports to musical copyright owners, which will include information about the sound recordings in which their musical works are embodied.[187] Inaccuracies or confusion in the public database regarding sound recording information may translate into inaccuracies in royalty statements to musical work copyright owners.[188] Finally, the statute requires the MLC to grant digital music providers bulk access to the public database free of charge,[189] which seems less meaningful if bulk access were to mean regurgitating the same information from reports of usage back to digital music providers.

While the proposed regulatory language does not address this aspect, commenters may address this topic in their responses. Commenters may consider whether their concerns are heightened, or perhaps assuaged, by the MLC's belief that deduplicating sound recording records, or cross-matching sound recording data, is ''outside the MLC's mandate.'' [190] Specifically, the MLC maintains that ''[t]he workable approach to deduplicating DMP audio would be for DMPs to pre-match their data against an authoritative source of sound recording data and audio, or digitally match their audio against an authoritative database of sound recording audio, and then provide the unique ID field for the audio in that authoritative audio database, along with access for the MLC to the audio from the authoritative database.'' [191] For both the public database and claiming portal, the MLC anticipates that for unmatched musical works, there will be separate records for each unmatched use (*i.e.,* separate records for each stream of a sound recording embodying the unmatched musical work).[192] The MLC does, however, intend to match multiple sound recordings to the same musical work in the public database and ''list[ ] all of those sound recordings together as associated with the musical work''; but observes that ''it is the additional step of having the MLC be the arbiter of which sound recordings are 'the same,' as opposed to just reflecting which ones match to the same musical work through similar metadata, that can be problematic.'' [193] The Office notes that as DMPs will be able to satisfy their section 115(d)(4)(B) obligations to ''engage in good-faith, commercially reasonable efforts to obtain'' sound recording information from sound recording copyright owners by arranging for the MLC to receive data directly from an authoritative source (*e.g.,* SoundExchange),[194] it may be unlikely that DMPs pre-match their data as proposed by the MLC.

C. Access to Information in the Public Musical Works Database

As noted above, the statute directs the Copyright Office to ''establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the [public] musical works database.'' [195] The database must ''be made available to members of the public in a searchable, online format, free of charge.'' [196] The mechanical licensing collective must make the data available ''in a bulk, machine-readable format, through a widely available software application,'' to digital music providers operating under valid notices of license, compliant significant nonblanket licensees, authorized vendors of such digital music providers or significant nonblanket licensees, and the Copyright Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.'' [197] The legislative history stresses the importance of the database and making it available to ''the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.'' [198] It adds that ''[i]ndividual lookups of works shall be free although the collective may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [199] And it further states that ''there shall be no requirement that a database user must register or otherwise turn over personal information in order to obtain the free access required by the legislation.'' [200]

1. Method of Access

In response to the September NOI, the DLC maintained that the mechanical licensing collective should not be required to provide more than ''[b]ulk downloads (either of the entire database, or of some subset thereof) in a flat file format, once per week per user,'' and ''[o]nline song-by-song searches to query the database, *e.g.,* through a website.'' [201] The DLC also contended that ''it would be unreasonable for digital music providers and significant nonblanket licensees to foot the bill for database features that would only benefit entities or individuals who are not paying a fair share of the MLC's costs,'' [202] and that application programming interfaces (''APIs'') are ''not needed by digital music providers and significant nonblanket licensees.'' [203]

Multiple commenters disagreed with the DLC, asserting that real-time access to the public database—not merely a weekly file—is necessary to meet the goals of the statute. For example, SoundExchange asserted that failure to provide real-time access ''could unfairly

[185] *See* 17 U.S.C. 115(d)(3)(E)(i), (ii)(IV)(bb), (iii)(I)(dd).

[186] A2IM & RIAA Reply September NOI Comment at 2.

[187] *See* U.S. Copyright Office, Interim Rule, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[188] *See* SoundExchange NPRM Comment at 9, U.S. Copyright Office Dkt. No. 2020–6, available at *https://beta.regulations.gov/document/COLC-2020-0003-0001* (expressing concern about relying on DMP reports of usage ''as a primary source of the information about musical works and sound recordings that will be reported on publisher royalty statements'').

[189] 17 U.S.C. 115(d)(3)(E)(v).

[190] MLC Letter June 15, 2020 at 3 n.3.

[191] *Id.*

[192] *Id.* at 4; MLC *Ex Parte* Letter #7 at 2 (''[F]or sound recordings that are matched to a specific musical work and for sound recordings that are unmatched, the MLC intends to include sound recording information in the disparate forms received from the DMPs that provided that information. The MLC intends to show the provenance of each such row of sound recording data (*i.e.,* the DMP from which the MLC received the sound recording data concerned), including both the name of the DMP and the DPID for that DMP.'').

[193] MLC Letter June 15, 2020 at 5.

[194] *See* U.S. Copyright Office, Interim Rule, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[195] 17 U.S.C. 115(d)(3)(E)(vi).

[196] *Id.* at 115(d)(3)(E)(v).

[197] *Id.*

[198] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[199] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8–9; Conf. Rep. at 7.

[200] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 9; Conf. Rep. at 7.

[201] DLC Initial September NOI Comment at 21.

[202] *Id.*

[203] DLC Reply September NOI Comment at 26.

distort competition for musical work license administration services by giving the MLC and its vendors preferred access to current data,'' and that the Office should ''maintain[ ] a level playing field in the market for musical work license administration services.'' [204] A2IM & RIAA noted that it would be ''damaging to the entire music ecosystem for third parties to utilize stale data, especially if they use it in connection with some sort of public-facing, data-related business or to drive licensing or payment decisions.'' [205] Further, FMC, MAC, and the Recording Academy also all stressed the importance of real-time access to the public database through APIs.[206]

In its April NOI, the Office tentatively declined to regulate the precise format in which the MLC provides bulk access to its database (*e.g.,* APIs), so as to provide the MLC flexibility as technology develops in providing database access.[207] The Office noted, however, that the MMA's goals—to have the public database serve as an authoritative source of information regarding musical work ownership information, to provide transparency, and to be used by entities other than digital music providers and significant nonblanket licensees—''support[ed] real-time access'' to the public database, ''either via bulk access or online song-by-song searches.'' [208]

In response, SoundExchange maintains that bulk access to the public database should be provided via an API, though acknowledging that ''[i]t does not seem necessary for the Office to regulate technical details of how the MLC implements an API.'' [209] SoundExchange contends that to ''ensure level access to the database, it must be made available via real-time, bulk access,'' that ''only a robust Application Programming Interface can deliver real-time results and achieve the industry-wide benefits of the musical works database contemplated by the MMA,'' and that ''[t]he use of APIs in modern software architectures is a commonly widespread best practice, and the level of effort behind their implementation is generally low and can be measured in weeks or even days depending on the chosen database technology.'' [210] CISAC & BIEM, FMC, and ARM support real-time bulk access to the public database,[211] with ARM stating that ''[i]t is hard to imagine any way the MLC could [offer bulk access that occurs in real time, in a machine-readable format where the data is transferred via a programmable interface] short of offering API access.'' [212] ARM also urges the Office to ''require the MLC to offer API access now, while permitting it to shift to other bulk-access technical solutions if and when those become widespread within the relevant industries''—but ''[s]hould the Office decline to require API access,'' ARM asks that the Office ''require some form of bulk access and [ ] specify that the bulk-access solution provide real-time access in a machine-readable form via a programmable interface.'' [213]

Both the MLC and DLC agree with the Office's tentative decision not to regulate the precise format in which the mechanical licensing collective must provide bulk access to the public database, but rather provide the collective flexibility as technology develops.[214] The MLC further emphasizes its commitment ''to fulfilling this important requirement,'' and that it is ''working with DDEX and its members on the format for publishing data to ensure it is useful to the wide variety of constituents.'' [215] In addition, the MLC maintains that it ''does plan to provide bulk access to the public data and will determine how best to do so once it has completed its initial development and rollout of the portal,'' and that ''one of the solutions the MLC is contemplating is to provide bulk access to the publicly-available data via an API.'' [216] Music Report contends that the Office's regulations should ''not require any specific file delivery protocols, but rather state general principles and standards to which the MLC must be held,'' such as ''bulk, machine-readable data access to eligible parties 'via any process for bulk data management widely adopted among music rights administrators,' '' which could include ''flat-file, API, and XML protocols, but could in future also include distributed ledger protocols.'' [217]

Having carefully considered this issue, the Office proposes that the MLC shall make the musical works database available to members of the public in a searchable, real-time, online format, free of charge. Regarding bulk access, the Office is inclined to agree that the MLC should—at least initially, due to its start-up nature—have some discretion regarding the precise format in which it provides bulk access to the public database. The Office is mindful, however, of the overwhelming desire for the MLC to provide bulk access through APIs from a broad swatch of organizations representing various corners of the music ecosystem. Accordingly, the proposed rule states

[204] SoundExchange Reply September NOI Comment at 9. *See also id.* at 4–5 (stating that ''[w]eekly downloads of a copy of the database are distinctly different and less useful than real-time access to current data,'' and noting that the MLC will be making constant updates and thus a weekly download would quickly become out of date).

[205] A2IM & RIAA Reply September NOI Comment at 7.

[206] FMC Reply September NOI Comment at 3 (concurring with SoundExchange's recommendations about API access, ''including the recommendations that API access include unique identifiers, catalog lookup, and fuzzy searching''); Recording Academy Initial September NOI Comment at 4 (''ensuring that the database has a user-friendly API and 'machine-to-machine' accessibility is important to its practical usability''); MAC Initial September NOI Comment at 2 (asserting that having API access and ensuring interoperability ''with other systems is the best way to make certain the MLC database becomes part of the overall music licensing ecosystem''). *See also* RIAA Initial September NOI Comment at 11 (''To facilitate efficient business-to-business use of the MLC database, the regulations should require the MLC to offer free API access to registered users of the database who request bulk access.''); SoundExchange Reply September NOI Comment at 4–5, 8 (challenging the DLC's assertion that providing APIs would be financially burdensome, stating that ''it is not obvious that there would be a significant cost difference between providing full API access and the diminished access the DLC describes'').

[207] 85 FR at 22578.

[208] *Id. See* 17 U.S.C. 115(d)(3)(E)(v); *see also* RIAA Initial September NOI Comment at 11 (asserting that record labels ''anticipate making frequent use of the MLC database''); MIC Coalition Initial September NOI Comment at 3 (''The opaqueness of the current music marketplace creates uncertainty that disproportionately harms small artists and independent publishers and stifles innovation. All stakeholders in the music marketplace benefit when current and accurate information about copyright ownership is easily accessible.'').

[209] SoundExchange April NOI Comment at 5.

[210] SoundExchange *Ex Parte* Letter Sept. 1, 2020 at 1.

[211] CISAC & BIEM April NOI Comment at 3 (''Updated information in the database is crucial, therefore, CISAC and BIEM suggest supporting real-time access to ensure DSPs have the correct information to properly identify works.''); FMC April NOI Comment at 2 (''We appreciate the Office's clear acknowledgment that real-time access is a priority, but are somewhat puzzled by the reluctance to require APIs. Requiring API access and interoperability doesn't limit flexibility—done right, it enables flexibility.''); ARM April NOI Comment at 7 (asserting that ''the MLC must offer bulk access that occurs in real time, in a machine-readable format where the data is transferred via a programmable interface'').

[212] ARM April NOI Comment at 7.

[213] *Id.* at 8.

[214] MLC April NOI Comment at 14; DLC April NOI Comment at 5.

[215] MLC April NOI Comment at 14; MLC April NOI Comment at 14 & n.8.

[216] MLC *Ex Parte* Letter #7 at 6.

[217] Music Reports April NOI Comment at 4. Music Reports also asks the Office to ''consider requiring the MLC to review such protocols every two years to determine whether newer protocols have been widely adopted.'' *Id.* Because digital music providers, significant nonblanket licensees, and third parties may base their business processes on the format in which the mechanical licensing collective provides bulk access to the public database, the Office is hesitant to require reevaluation of that format every two years.

that the MLC shall make the musical works database available in a bulk, real-time, machine-readable format through a process for bulk data management widely adopted among music rights administrators to: (1) Digital music providers operating under the authority of valid notices of license, and their authorized vendors, free of charge; (2) significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6), and their authorized vendors, free of charge; (3) the Register of Copyrights, free of charge; and (4) any other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity, which shall not be unreasonable. In addition, starting July 1, 2021, the MLC must provide bulk access to the public database through APIs, although the proposed rule would provide the MLC flexibility to determine how to precisely implement that requirement.

2. Marginal Cost

Despite the statute and legislative history stating third parties may be charged the ''marginal cost'' of being provided bulk access, in response to the September NOI, A2IM & RIAA expressed concern about making the public database available to third parties ''unless the fee those third parties are required to pay takes into account the cost for the MLC to acquire that data and all of the costs and hard work that goes into creating, compiling, verifying, deduping, etc. the sound recording data that will reside within the MLC database and the potential opportunity costs to [record labels] of having that data available to third parties via the MLC.'' [218] RIAA & A2IM asked the Office to define ''marginal cost'' to ''include not just the cost of creating and maintaining the bulk access, but also the cost to the MLC of acquiring the data, including payment to the data source, for the hard work of aggregating, verifying, deduping and resolving conflicts in the data.'' [219] In its April NOI, the Office tentatively declined this request, stating that ''[i]t is not clear that 'marginal cost' is a vague term,'' and that the ''MLC should be able to determine the best pricing information in light of its operations, based on the statutory and legislative history language.'' [220]

In response, ARM asks the Office to reconsider its decision.[221] By contrast, Music Reports, a provider of music copyright ownership information and rights administration services, contends that ''marginal cost'' should be ''acknowledged as modest'' and read to mean solely the cost of making the data available to such person or entity.[222] Music Reports further maintains that ''the cost of making such data available in bulk is non-trivial, but not expensive when distributed over time and among multiple parties,'' and that even where a range of formats, protocols, and choreographies are offered, ''and even when offered at high frequency and on a highly contemporary basis, once those elements are established and made public, the cost to maintain them tends to be relatively fixed and modest.'' [223] For its part, the MLC agreed with the Office's tentative conclusion that the MLC should be able to determine the best pricing information for bulk access to the database ''to third parties not enumerated in the statute.'' [224]

The Office notes that the MLC is required to provide access in a ''bulk, machine-readable format'' to digital music providers operating under the authority of valid notices of license and significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6).[225] Given that the statute envisions digital service providers and significant nonblanket licensees funding the mechanical licensing collective's activities, which includes the creation and maintenance of a public musical works database,[226] and that the term ''marginal cost'' is not vague, it is difficult for the Office to see how Congress intended third parties to offset the larger cost of the collective acquiring the data and aggregating, verifying, deduping and resolving conflicts in the data. Rather, the legislative history emphasizes the importance of accessibility to the public database [227] and indicates an intent to create a level playing field, recognizing that ''[m]usic metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on.'' [228] Requiring third parties to pay more than the ''marginal cost'' could create commercial disadvantages that the MMA sought to eliminate. Accordingly, the proposed rule states that the mechanical licensing collective shall make the musical works database available in a bulk, real-time, machine-readable format to any other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity, which shall not be unreasonable.[229] This allows the MLC to determine the best pricing information in light of its operations, while providing reassurance that ''marginal cost'' will not be unreasonable.

3. Abuse

The legislative history states that in cases of efforts by third parties to bypass the marginal cost recovery for bulk access (*i.e.,* abuse), the MLC ''may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [230] In response to the September NOI, both the MLC and DLC proposed regulatory language that would provide the MLC discretion to block efforts to bypass the

[218] A2IM & RIAA Reply September NOI Comment at 7; *see also id.* (contending that otherwise third-party businesses ''would be able to access that data at a highly subsidized, below-market price'').

[219] *Id.* at 8.

[220] 85 FR at 22579; *see* Conf. Rep. at 7 (''Given the importance of this database, the legislation makes clear that it shall be made available to the Copyright Office and the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.''); *see also* Music Reports Initial September NOI Comment at 5 (''Music Reports notes that the marginal cost of automated daily data delivery protocols is relatively trivial, and calls upon the Office to ensure that such automated delivery be made available upon the first availability of the [public] database, and that the fee schedule scrupulously adhere to the 'marginal cost' standard.'').

[221] ARM April NOI Comment at 9.

[222] Music Reports April NOI Comment at 7.

[223] *Id.* at 8; *see also* Music Reports Initial September NOI Comment at 5 (''Music Reports notes that the marginal cost of automated daily data delivery protocols is relatively trivial, and calls upon the Office to ensure that such automated delivery be made available upon the first availability of the [public] database, and that the fee schedule scrupulously adhere to the 'marginal cost' standard.'').

[224] MLC April NOI Comment at 14.

[225] *See* 17 U.S.C. 115(d)(3)(E)(v)(I)–(II).

[226] *See id.* at 115(d)(3)(E), (d)(4)(C), (d)(7)(A).

[227] Conf. Rep. at 7 (''Given the importance of this database, the legislation makes clear that it shall be made available to the Copyright Office and the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.'').

[228] *See id.* at 6. *See also* DLC April NOI Comment at 5 (''[T]he Office should ensure that neither the MLC nor its vendors are given a special competitive advantage because of their responsibility for maintaining this database.''); SoundExchange *Ex Parte* Letter Sept. 1, 2020 at 1 (''[T]he musical works database should be a resource for the entire music industry,'' and ''regulations should ensure that potential competitors have the same access to MLC data and the MLC database enjoyed by the MLC's vendors.'').

[229] Music Reports also asks that bulk access to the public database be provided on a ''competition-neutral basis.'' Music Reports April NOI Comment at 5. Because the proposed rule requires the mechanical licensing collective to provide bulk access to any third party that pays the ''marginal cost'' of doing so, the Office does not believe such a condition needs to be codified in regulations.

[230] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8–9; Conf. Rep. at 7.

marginal cost recovery.[231] A2IM & RIAA also suggested that the MLC be required to implement technological protection measures (''TPMs'') to reduce the likelihood of third parties ''scraping'' data without paying any fee.[232] In the April NOI, the Office agreed that, in principle, the MLC should at a minimum have such discretion, and sought public input on any issues regarding the mechanical licensing collective's ability to block efforts to bypass the marginal cost recovery, particularly how to avoid penalizing legitimate users while providing the collective flexibility to police abuse, and whether regulatory language should address application of TPMs.[233]

Both the MLC and DLC reiterate their support of granting the mechanical licensing collective discretion to block third parties from bulk access to the public database after attempts to bypass marginal cost recovery,[234] and no commenters opposed this proposal. The MLC further contends that it should have the discretion to block bulk database access where persons have engaged in other unlawful activity with respect to the database.[235]

In light of these comments, the proposed rule states that the MLC shall establish appropriate terms of use or other policies governing use of the database that allows it to suspend access to any individual or entity that appears, in the collective's reasonable determination, to be attempting to bypass the MLC's right to charge a fee to recover its marginal costs for bulk access through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. To ensure transparency regarding which persons or entities have had bulk database access suspended, as discussed more below, the proposed rule requires the mechanical licensing collective to identify such persons and entities in its annual report and explain the reason(s) for suspension.

4. Restrictions on Use

In response to the September 2019 NOI, CISAC & BIEM asked for regulations defining ''strict terms and conditions'' for use of data from the database by digital music providers and significant nonblanket licensees (and their authorized vendors), ''including prohibition for DSPs to use data for purposes other than processing uses and managing licenses and collaborating with the MLC in data collection.'' [236] By contrast, the DLC maintained that ''licensees should be able use the data they receive from the MLC for any legal purpose.'' [237] While the MLC ''agree[d] that there should be some reasonable limitation on the use of the information to ensure that it is not misappropriated for improper purposes'' and stated that it ''intends to include such limitation in its terms of use in the database,'' the MLC contended that appropriate terms of use should address potential misuse of information from the public database (rather than regulations).[238]

In its April 2020 NOI, the Office agreed that while it will be important for the collective to develop reasonable terms of use to address potential misuse of information in the public database, and that it appreciates the role that contractual remedies may play to deter abuse, the MMA directs the Office to issue regulations regarding ''usage restrictions,'' in addition to usability and interoperability of the database.[239] The Office also acknowledged the risk of misuse, and sought further public input on any issues that should be considered relating to restrictions on usage of information in the public database, including whether regulatory language should address remedies for misuse (and if so, how and why), or otherwise provide a potential regulatory floor for the MLC's terms of use.[240]

Comments in response to the Office's April 2020 notification were mixed. CISAC & BIEM again asked for ''strict rules for the use of data available on the MLC database by the public, prohibiting commercial uses and allowing exclusively lookup functions,'' [241] whereas Music Reports contends that data in the public database should be available for any legal use.[242] FMC is ''inclined to want to see some reasonable terms and conditions'' regarding use of the public database, but that ''[i]t's entirely appropriate for the Office to offer a floor.'' [243] The DLC contends that flexibility is appropriate regarding restrictions on use, that ''the specific operational realities of the database to lend themselves to useful *ex ante* regulation,'' and thus reiterated that ''abusive access can be adequately addressed by empowering the MLC to block efforts to bypass marginal cost recovery.'' [244]

For its part, the MLC continues to maintain that ''there should be some reasonable limitation on the use of the information in the MLC database to ensure that it is not misappropriated for improper purposes,'' and that it intends to ''include such limitation in its terms of use in the database.'' [245] In response to the Office's concerns about misappropriation of personally identifiable information (PII) by bad actors,[246] the MLC maintains that it ''does not intend to include in the public database the types of information that have traditionally been considered PII, such as Social Security Number (SSN), date of birth (DOB), and home address or personal email (to the extent those are not provided as the contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III)),'' and that it ''further intends to protect other types of PII.'' [247] But the MLC also asks that it ''be afforded the flexibility to disclose information not specifically identified by statute that would still be useful for the database but would not have serious privacy or identity theft risks to individuals or entities.'' [248]

As noted above, the proposed rule requires the mechanical licensing collective to establish appropriate terms of use or other policies governing use of the database that allow it to suspend access to any individual or entity that appears, in the collective's reasonable determination, to be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. The proposed rule also requires the MLC to identify any persons and entities in its annual report that have had database access

[231] MLC Initial September NOI Comment at 25; DLC Reply September NOI Comment Add. at A–17.

[232] A2IM & RIAA Reply September NOI Comment at 7.

[233] 85 FR at 22579.

[234] MLC April NOI Comment at 15 (''[A] regulation allowing the MLC to block efforts by non-licensees or significant non-blanket licensees to bypass the marginal cost recovery for bulk database access through repeated queries would be useful.''); DLC April NOI Comment at 5 (''DLC reiterates its prior comment that the problem of abusive access can be adequately addressed by empowering the MLC to block efforts to bypass marginal cost recovery.'').

[235] MLC April NOI Comment at 15.

[236] CISAC & BIEM Initial September NOI Comment at 4.

[237] DLC Initial September NOI Comment at 21.

[238] MLC Reply September NOI Comment at 37.

[239] 85 FR at 22579; 17 U.S.C. 115(d)(3)(E)(vi).

[240] 85 FR at 22579.

[241] CISAC & BIEM April NOI Comment at 3

[242] Music Reports April NOI Comment at 7.

[243] FMC April NOI Comment at 3.

[244] DLC April NOI Comment at 5.

[245] MLC April NOI Comment at 15.

[246] *See* 85 FR at 22579.

[247] MLC April NOI Comment at 16.

[248] *Id.* at 16 n.9.

suspended and explain the reason(s) for such suspension, for purposes of transparency. While wishing to grant the MLC some flexibility regarding restrictions on use regarding the public database, the Office reiterates that any database terms of use should not be overly broad or impose unnecessary restrictions upon good faith users.[249]

D. Transparency of MLC Operations; Annual Reporting

The legislative history and statute envision the MLC ''operat[ing] in a transparent and accountable manner'' [250] and ensuring that its ''policies and practices . . . are transparent and accountable.'' [251] The MLC itself has expressed its commitment to transparency, both by including transparency as one of its four key principles underpinning its operations on its current website,[252] and in written comments to the Office.[253] As noted in the April NOI, one avenue for MLC transparency is through its annual report.[254] The MMA requires the MLC to publish an annual report no later than June 30 of each year after the license availability date, setting forth information regarding: (1) Its operational and licensing practices; (2) how royalties are collected and distributed; (3) budgeting and expenditures; (4) the collective total costs for the preceding calendar year; (5) the MLC's projected annual budget; (6) aggregated royalty receipts and payments; (7) expenses that are more than ten percent of the MLC's annual budget; and (8) the MLC's efforts to locate and identify copyright owners of unmatched musical works (and shares of works).[255] The MLC must deliver a copy of the annual report to the Register of Copyrights and make this report publicly available.[256]

The annual report provides much of the information requested by parties about the collective's activities. For example, commenters sought disclosure of information in specific areas the statute envisions the annual report addressing, such as board governance,[257] the manner in which the MLC will distribute unclaimed royalties,[258] development updates and certifications related to its IT systems,[259] and the MLC's efforts to identify copyright owners.[260] The MLC itself recognized that its annual report is one way in which it intends to ''promote transparency.'' [261] But based on the September NOI comments, the Office thus asked for further public input on specific types of information the MLC should include in its annual report, including whether to include issues related to vendor selection criteria and performance, board and committee selection criteria, and actual or potential conflicts raised with and/or addressed by its board of directors, if any, in accordance with the MLC's policy.[262]

In response, the DLC, SGA, and FMC agree that the MLC's annual report should be used to provide transparency on the collective's activities more generally,[263] with both the DLC and FMC stating that the annual report should include information about board governance and the selection and criteria used for the collective's vendors.[264] CISAC & BIEM maintain that the annual report should include information regarding the ''global amount of accrued undistributed royalties.'' [265] SGA proposes that a section of the annual report ''be dedicated to an independent report by the board's music creator representatives on their activities in support of songwriter and composer interests, the handling of conflict-related problems by the board and its various controlled committees, and the issues of conflict that remain to be addressed and resolved.'' [266] Other commenters asked for MLC oversight to ensure disclosure of certain information, though without directly linking such oversight to the annual report. For example, one commenter expressed concern about the ability of the MLC to apply unclaimed accrued royalties on an interim basis to defray the collective's costs (and the transparency of any decisions to do so), should the administrative assessment fail to cover current collective total costs.[267] In the Office's separate rulemaking regarding royalty statements, other commenters expressed a desire to impose a deadline on the MLC's distribution of royalties to copyright owners to ensure prompt

[249] *See* 85 FR at 22579.

[250] S. Rep. No. 115–339, at 7.

[251] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[252] The MLC, Mission and Principles, *https://themlc.com/mission-and-principles* (last visited Sept. 1, 2020) (''The MLC will build trust by operating transparently. The MLC is governed by a board of songwriters and music publishers who will help ensure our work is conducted with integrity.''). *See also* The MLC, The MLC Process, *https://themlc.com/how-it-works* (last visited Sept. 1, 2020) (''The MLC is committed to transparency. The MLC will make data on unclaimed works and unmatched uses available to be searched by registered users of The MLC Portal and the public at large.'').

[253] *See, e.g.,* MLC Reply September NOI Comment at 42–43 (''The MLC is committed to transparency and submits that, while seeking to enact regulations is not an efficient or effective approach, the MLC will implement policies and procedures to ensure transparency.'').

[254] 85 FR at 22572.

[255] 17 U.S.C. 115(d)(3)(D)(vii)(I)(aa)–(hh); Conf. Rep. at 7.

[256] 17 U.S.C. 115(d)(3)(D)(vii)(I), (II).

[257] Recording Academy Reply September NOI Comment at 2.

[258] Lowery Reply September NOI Comment at 8; Monica Corton Consulting Reply September NOI Comment at 3.

[259] Lowery Reply September NOI Comment at 5.

[260] SGA Initial September NOI Comment at 6. CISAC & BIEM contend that ''[c]larifications should be made on how musical works will be matched to sound recording and how far these cross-references will not conflict with matching and or claims conducted by other entities, which could raise identification conflicts at DSP level.'' CISAC & BIEM Initial September NOI Comment at 3. The statute requires the MLC to disclose in its annual report ''the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of works)'' with respect to administration of the U.S. blanket license under section 115. 17 U.S.C. 115(d)(3)(D)(vii)(I)(hh).

[261] The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Sept. 1, 2020) (noting that the MLC will ''promote transparency'' by ''[p]roviding an annual report to the public and to the Copyright Office detailing the operations of The MLC, its licensing practices, collection and distribution of royalties, budget and cost information, its efforts to resolve unmatched royalties, and total royalties received and paid out'').

[262] 85 FR at 22572; *see also* National Association of Independent Songwriters (''NOIS'') et al. Initial September NOI Comment at 16; MAC Initial September NOI Comment at 2; Lowery Reply September NOI Comment at 8; SGA Reply September NOI Comment at 5.

[263] *See* DLC April NOI Comment at 3 (stating that the transparency requirements in the annual report ''are critical to ensuring that all industry participants—songwriters, publishers, licensees, and the Copyright Office itself—can confirm that the MLC is operating effectively and in the best interests of the industry.''); SGA April NOI Comment at 6 (''As the Copyright Office stated in its Notice, another 'avenue for transparency with respect to the MLC is through its annual report.' SGA emphatically agrees with this assessment . . .''); FMC April NOI Comment at 1 (agreeing that the annual report should include information about board governance, the manner in which the collective will distribute unclaimed royalties, development updates and certifications related to its IT systems, and the collective's efforts to identify copyright owners); *see id.* (''Annual reports would ideally also offer a sense where the areas of growth and needs for additional effort might lie, with regards to demographics and genres; this sort of candid self-assessment, would help writers and industry allies be effective partners to the MLC in reaching these populations most effectively.'').

[264] DLC April NOI Comment at 3; FMC April NOI Comment at 1.

[265] CISAC & BIEM April NOI Comment at 2.

[266] SGA April NOI Comment at 7. Although the Office tentatively declines to require an independent report from the board's music creator representatives through regulation, the Office fully expects the MLC to give voice to its board's songwriter representatives as well as its statutory committees, whether through its annual reporting or other public announcements.

[267] *See* Castle April NOI Comment at 13 (stating Office ''regulations should provide that there be some written public statement by The MLC's CFO . . . that these funds are being approved by the board for disbursement before the taking along with a justification statement. The MLC board should have to sign up to that statement with full transparency of why there is this compelling need and why that need can only be met this way.''); 17 U.S.C. 115(d)(7)(C).

payment, but presumably also to provide copyright owners some estimation as to when they will be paid.

For its part, although the MLC states that it ''is committed to providing additional information about other areas of its operations in the annual report or in other public disclosures,'' [268] and that it ''is making public a substantial amount of information concerning its operations and communications as such information becomes available,'' [269] it ''does not believe that such further regulation in this area is necessary, as the MMA already identifies with sufficient detail the subjects that the MLC is to report on in the annual report,'' [270] and any such regulation would be ''premature.'' [271] The MLC contends that it ''has already publicly disclosed substantial details of the process by which it selected its primary technology and royalty administration vendors, and publicly filed copies of its [request for information] and [request for proposals],'' [272] and regarding ''the selection process of its initial board of directors and statutory committees,'' with future board and committee selections being made pursuant to the MLC's by-laws, which are currently public.[273] The MLC expresses concern that disclosure regarding vendor selection ''will likely have a chilling effect on vendor participation in future RFIs and RFPs because bidders that do not want information in their proposals to be made publicly available will elect not to participate,'' [274] while noting that statutory-required reporting regarding ''aggregated royalty receipts and payments'' and ''efforts to locate and identify copyright owners of unmatched works (and shares of works)'' will speak to vendor performance.[275] The MLC maintains that if the Office does decide to require disclosure of vendor selection information in the annual report, the term ''vendor'' should mean ''any vendor who is both performing services related to the mechanical licensing collective's matching and royalty accounting responsibilities and who received compensation in an amount greater than 10% of the mechanical licensing collective's budget.'' [276] In addition, the MLC notes that ''[i]t is not common practice to publish the details of how a conflicts policy is implemented or applied, because such publication may violate confidentiality obligations of board members that may be subject to separate confidentiality agreements,'' and that ''it is appropriate for the MLC's conflicts policy to be enforced internally, with directors having the option to share any conflicts concerns privately with the MLC's counsel and recuse themselves from votes if appropriate.'' [277]

Given the overwhelming desire for transparency regarding the MLC's activities, and the ability of the annual report to provide such transparency, the proposed rule requires the MLC to disclose certain information in its annual report besides the statutorily-required categories of information. *First,* the annual report must disclose the MLC's selection of board members and criteria used in selecting any new board members during the preceding calendar year. *Second,* the annual report must disclose the MLC's selection of new vendors hired to assist with the technological or operational administration of the blanket license during the preceding calendar year, including the criteria used in deciding to select such vendors, and any performance reviews of such vendors.[278] The proposed rule intends to include vendors directly involved with collective's administration of the section 115 license, versus any vendors it may hire, generally (*e.g.,* water delivery). *Third,* the annual report must disclose whether the MLC, pursuant to 17 U.S.C. 115(d)(7)(C), has applied any unclaimed accrued royalties on an interim basis to defray costs in the event that the administrative assessment is inadequate to cover collective total costs. *Fourth,* the annual report must disclose the average processing and distribution times for distributing royalties to copyright owners. And *fifth,* as noted above, the annual report must disclose whether the MLC suspended access to any individual or entity attempting to bypass the collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes.

As expressed in the April NOI, the Office encourages the MLC to publicly share with greater particularity planning information, such as notional schedules, beta wireframes, or other documentation, to provide context to MLC stakeholders in the months leading up to the license availability date. The Office appreciates that the MLC ''still intends to publicly roll out the portal for beta testing at or shortly after the end of the third quarter of this year,'' and that ''[t]here will also be alpha testing (to a smaller group) prior to beta testing.'' [279]

Relatedly, two commenters suggested that the Office's regulations create a ''feedback loop'' to receive complaints about the mechanical licensing collective.[280] CISAC & BIEM [281] agree that ''the identification of a point of contact for inquiries and complaints with timely redress is an indispensable feature for transparency.'' The Office notes that the statute requires the mechanical licensing collective to

[268] MLC April NOI Comment at 4.

[269] *Id.* at 7.

[270] *Id.* at 3.

[271] *Id.* at 4.

[272] *Id.* at 5.

[273] *Id.* at 6; *see* The MLC, Governance and Bylaws, *https://themlc.com/governance* (last visited Sept. 1, 2020). The MLC notes that the collective's board appointments are subject to additional oversight given that they require the approval of the [Library of Congress].'' MLC April NOI Comment at 6. The Copyright Office also makes available information concerning the MLC's board membership and the procedure to fill MLC board and statutory committee vacancies. *See* U.S. Copyright Office, MLC and DLC Contact Information, Boards of Directors, and Committees, *https://www.copyright.gov/music-modernization/mlc-dlc-info/* (last visited Sept. 1, 2020).

[274] MLC April NOI Comment at 5.

[275] *Id.* at 6. The MLC also suggests that because the statute requires the annual report to include information regarding ''expenses that are more than 10 percent of the annual mechanical licensing collective budget,'' ''[t]his definition will include the MLC's primary vendor, and thus provide even further disclosures.'' MLC *Ex Parte* Letter #7 at 7; 17 U.S.C. 115(d)(3)(D)(vii)(I)(gg). Identification of the MLC's vendors, should they exceed ten percent of the MCL's budget, is not the same as identifying the criteria used to select those vendors, although the Office agrees this statutory requirement should encourage the MLC to be hearty in its annual reporting with respect to the performance of primary vendors as a result.

[276] MLC *Ex Parte* Letter #7 at 7. The MLC's startup assessment is $33,500,000 and its 2021 annual assessment is $28,500,000, indicating that a 10% threshold would limit disclosure to vendors paid several million dollars. *See* 37 CFR 390.2(a), (b).

[277] MLC April NOI Comment at 6.

[278] The statute provides that the MLC is authorized to ''arrange for services of outside vendors and others, to support the activities of the mechanical licensing collective.'' 17 U.S.C. 115(d)(3)(C)(i)(VII). The MLC selected its vendor Harry Fox Agency (''HFA'') without advance notice to the Office, following the designation of the MLC. Given commenters' concerns regarding HFA's past performance, the Office is receptive to receiving continual feedback regarding future performance of activities taken on behalf of the MLC. *See* Lowery Reply September NOI Comment at 3, 11–12; SGA Reply September NOI Comment at 5.

[279] MLC *Ex Parte* Letter #7 at 4.

[280] Castle April NOI Comment at 16 (contending the Office should create ''a complaint webform with someone to read the complaints as they come in as part of the Office's oversight role''); Lowery Reply September NOI Comment at 11 (stating ''regulations should provide for a feedback loop that songwriters can avail themselves of that the Copyright Office must take into account when determining its re-designation'').

[281] CISAC & BIEM April NOI Comment at 2.

''identify a point of contact for publisher inquiries and complaints with timely redress.'' [282] The proposed rule emphasizes this responsibility by requiring the MLC to designate a point of contact for inquiries and complaints with timely redress, including complaints regarding the public musical works database and/or the collective's activities. The name and contact information for the point of contact must be made prominently available on the MLC's website.[283] In addition, the Copyright Office always welcomes feedback relevant to its statutory duties or service. Members of the public may communicate with the Office through the webform available *https://www.copyright.gov/help.* The Office requests that any inquiries or comments with respect to the MLC or MMA be indicated accordingly.

III. Subjects of Inquiry

The proposed rule is designed to reasonably implement a number of regulatory duties assigned to the Copyright Office under the MMA. The Office solicits additional public comment on all aspects of the proposed rule. If the MLC believes it will need time and/or a transition period to implement any aspect of the proposed rule, the Office asks the MLC to provide an explanation and time estimate(s) for such implementation.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Add §§ 210.31 through 201.33 to read as follows:

§ 210.31 Musical works database information.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective will provide information relating to musical works (and shares of such works), and sound recordings in which the musical works are embodied, in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and to increase usability of the database.

(b) *Matched musical works.* With respect to musical works (or shares thereof) where the copyright owners have been identified and located, the musical works database shall contain, at a minimum, the following:

(1) Information regarding the musical work:

(i) Musical work title(s);

(ii) The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner;

(iii) Contact information for the copyright owner of the musical work (or share thereof), which can be a post office box or similar designation, or a ''care of'' address (*e.g.,* publisher);

(iv) The mechanical licensing collective's standard identifier for the musical work; and

(v) To the extent reasonably available to the mechanical licensing collective:

(A) Any alternative or parenthetical titles for the musical work;

(B) ISWC;

(C) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously;

(D) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(E) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter, and administrator;

(F) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(G) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied, to the extent reasonably available to the mechanical licensing collective:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be displayed, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information commonly used to assist in associating sound recordings with musical works.

(c) *Unmatched musical works.* With respect to musical works (or shares thereof) where the copyright owners have not been identified or located, the musical works database shall include, to the extent reasonably available to the mechanical licensing collective:

(1) Information regarding the musical work:

(i) Musical work title(s), including any alternative or parenthetical titles for the musical work;

(ii) The ownership percentage of the musical work for which an owner has not been identified;

(iii) If a musical work copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner;

(iv) The mechanical licensing collective's standard identifier for the musical work;

(v) ISWC;

(vi) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously;

(vii) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(viii) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter and administrator;

(ix) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(x) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including

[282] 17 U.S.C. 115(d)(3)(D)(ix)(I)(bb).

[283] *See* U.S. Copyright Office, Section 512 of title 17 159 (2020), *https://www.copyright.gov/policy/section512/section-512-full-report.pdf* (noting that while section 512 requires an online service provider's agent information to be ''publicly available'' on its website, ''there is currently no standardized practice for the location or content of user notifications regarding the takedown process,'' and that Congress could thus ''modify the language of section 512(c)(2) to provide that the designated agent's information be not just 'on its website in a location accessible to the public,' but also 'prominently displayed' ''); 17 U.S.C. 512(c)(2).

LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be displayed, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information commonly used to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works.

(d) *Field labeling.* The mechanical licensing collective shall consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion, particularly regarding information relating to sound recording copyright owner. Fields displaying PLine, LabelName, or, if applicable, DPID, information may not on their own be labeled ''sound recording copyright owner.''

(e) *Data provenance.* For information relating to sound recordings, the mechanical licensing collective shall identify the source of such information in the public musical works database.

(f) *Historical data.* The mechanical licensing collective shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time. The mechanical licensing collective shall determine, in its reasonable discretion, the most appropriate method for archiving and maintaining such historical data to track ownership and other information changes in the database.

(g) *Personally identifiable information.* The mechanical licensing collective shall not include in the public musical works database any individual's Social Security Number (SSN), taxpayer identification number, financial account number(s), date of birth (DOB), or home address or personal email to the extent it is not musical work copyright owner contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III). The mechanical licensing collective shall also engage in reasonable, good-faith efforts to ensure that other personally identifying information (*i.e.,* information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to such specific individual), is not available in the public musical works database, other than to the extent it is required by law.

(h) *Disclaimer.* The mechanical licensing collective shall include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording information, and explains the labeling of information related to sound recording copyright owner, including the ''LabelName'' and ''PLine'' fields.

§ 210.32 Musical works database usability, interoperability, and usage restrictions.

This section prescribes rules under which the mechanical licensing collective shall ensure the usability, interoperability, and proper usage of the public musical works database created pursuant to 17 U.S.C. 115(d)(3)(E).

(a) *Database access.* (1)(i) The mechanical licensing collective shall make the musical works database available to members of the public in a searchable, real-time, online format, free of charge. In addition, the mechanical licensing collective shall make the musical works database available in a bulk, real-time, machine-readable format through a process for bulk data management widely adopted among music rights administrators to:

(A) Digital music providers operating under the authority of valid notices of license, and their authorized vendors, free of charge;

(B) Significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6), and their authorized vendors, free of charge;

(C) The Register of Copyrights, free of charge; and

(D) Any other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity, which shall not be unreasonable.

(ii) Starting July 1, 2021, the mechanical licensing collective shall make the musical works database available at least in a bulk, real-time, machine-readable format under this paragraph (a)(1) through application programming interfaces (APIs).

(2) Notwithstanding paragraph (a)(1) of this section, the mechanical licensing collective shall establish appropriate terms of use or other policies governing use of the database that allows the mechanical licensing collective to suspend access to any individual or entity that appears, in the mechanical licensing collective's reasonable determination, to be attempting to bypass the mechanical licensing collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes.

(b) *Point of contact for inquiries and complaints.* In accordance with its obligations under 17 U.S.C. 115(d)(3)(D)(ix)(I)(bb), the mechanical licensing collective shall designate a point of contact for inquiries and complaints with timely redress, including complaints regarding the public musical works database and/or the mechanical licensing collective's activities. The mechanical licensing collective must make publicly available, including prominently on its website, the following information:

(1) The name of the designated point of contact for inquiries and complaints. The designated point of contact may be an individual (*e.g.,* ''Jane Doe'') or a specific position or title held by an individual at the mechanical licensing collective (*e.g.,* ''Customer Relations Manager''). Only a single point of contact may be designated.

(2) The physical mail address (street address or post office box), telephone number, and email address of the designated point of contact.

§ 210.33 Annual reporting by the mechanical licensing collective.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective will provide certain information in its annual report pursuant to 17 U.S.C. 115(d)(3)(D)(vii).

(b) *Contents.* Each of the mechanical licensing collective's annual reports shall contain, at a minimum, the following information:

(1) The operational and licensing practices of the mechanical licensing collective;

(2) How the mechanical licensing collective collects and distributes royalties, including the average processing and distribution times for distributing royalties for the preceding calendar year;

(3) Budgeting and expenditures for the mechanical licensing collective;

(4) The mechanical licensing collective's total costs for the preceding calendar year;

(5) The projected annual mechanical licensing collective budget;

(6) Aggregated royalty receipts and payments;

(7) Expenses that are more than 10 percent of the annual mechanical licensing collective budget;

(8) The efforts of the mechanical licensing collective to locate and identify copyright owners of unmatched musical works (and shares of works);

(9) The mechanical licensing collective's selection of board members and criteria used in selecting any new board members during the preceding calendar year;

(10) The mechanical licensing collective's selection of new vendors during the preceding calendar year, including the criteria used in deciding to select such vendors, and any performance reviews of the mechanical licensing collective's current vendors. Such description shall include a general description of any new request for information (RFI) and/or request for proposals (RFP) process, either copies of the relevant RFI and/or RFP or a list of the functional requirements covered in the RFI or RFP, the names of the parties responding to the RFI and/or RFP. In connection with the disclosure described in this paragraph (b)(10), the mechanical licensing collective shall not be required to disclose any confidential or sensitive business information. For the purposes of this paragraph (b)(10), ''vendor'' means any vendor performing materially significant technology or operational services related to the mechanical licensing collective's matching and royalty accounting activities;

(11) Whether during the preceding calendar year the mechanical licensing collective, pursuant to 17 U.S.C. 115(d)(7)(C), applied any unclaimed accrued royalties on an interim basis to defray costs in the event that the administrative assessment is inadequate to cover collective total costs, including the amount of unclaimed accrued royalties applied and plans for future reimbursement of such royalties from future collection of the assessment; and

(12) Whether during the preceding calendar year the mechanical licensing collective suspended access to the public database to any individual or entity attempting to bypass the collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. If the mechanical licensing collective so suspended access to the public database to any individual or entity, the annual report must identify such individual(s) and entity(ies) and provide the reason(s) for suspension.

Dated: September 4, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Big Creek Crayfish and St. Francis River Crayfish and Designations of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2019–0020; FF09E21000 FXES11110900000 201]

RIN 1018–BD98

Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Big Creek Crayfish and St. Francis River Crayfish and Designations of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: After review of the best available scientific and commercial information, we, the U.S. Fish and Wildlife Service (Service), propose to list two Missouri species, the Big Creek crayfish (*Faxonius peruncus*) and the St. Francis River crayfish (*Faxonius quadruncus*), as threatened species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to both species. We also propose a species-specific rule issued under section 4(d) of the Act (''4(d) rule'') that provides for the protection of the Big Creek crayfish and the St. Francis River crayfish and to designate critical habitat for both species under the Act. In total, approximately 1,069 river miles (1,720 river kilometers) fall within the boundaries of the proposed critical habitat designation for the Big Creek crayfish, and approximately 1,043 river miles (1,679 river kilometers) fall within the boundaries of the proposed critical habitat designation for the St. Francis River crayfish. Finally, we announce the availability of a draft economic analysis of the proposed critical habitat designations.

DATES: We will accept comments received or postmarked on or before November 16, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 2, 2020.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2019–0020, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R3–ES–2019–0020, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the administrative record and are available at *https://www.fws.gov/midwest/;* and at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020; and at the Columbia, Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website and Field Office set out above, and may also be included in the preamble of this proposed rule and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Herrington, Field Supervisor; U.S. Fish and Wildlife Service; Columbia, Missouri Ecological Services Field Office; 101 Park DeVille Drive, Suite A; Columbia, MO 65203–0057; telephone 573–234–2132. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. 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. We propose the listing of the Big Creek crayfish and St. Francis River crayfish as threatened species with a rule issued under section 4(d) of the Act, and we propose the designation of critical habitat for both species.

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 have determined that displacement (Factor E) by the woodland crayfish (Faxonius hylas) is the primary threat to both the Big Creek crayfish and the St. Francis River crayfish. However, degraded water quality (Factor A) from heavy metal mining activities in the watershed is impacting the species and may act synergistically with the spread of the nonnative woodland crayfish and subsequent displacement of the Big Creek crayfish and St. Francis River crayfish. The existing regulatory mechanisms are not adequate to reduce these threats to a level that the species do not warrant listing (Factor D).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary will make the designation on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed if such areas are essential to the conservation of the species.

Peer Review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016,

memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of four (and received responses from two) appropriate specialists regarding the species status assessment report, which informed this proposed rule. The purpose of peer review is to ensure that the science behind our listing determinations, the critical habitat designations, and 4(d) rule are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and stressors to the species. Additionally, we received review from three other experts outside the Service (State and academic), some of whom also collaborated with our species status assessment team during the species status assessment process, but were not part of the formal peer review process.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of these species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of either species.

(5) Information concerning activities that should be considered under a rule issued in accordance with section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) as a prohibition or exemption within U.S. territory that would contribute to the conservation of the species. In particular, information concerning whether import, export, and activities related to sale in interstate and foreign commerce should be prohibited, or whether any other activities should be considered excepted from the prohibitions in the 4(d) rule.

(6) Additional provisions the Service may wish to consider for a 4(d) rule in order to conserve, recover, and manage the Big Creek crayfish and the St. Francis River crayfish, such as the best management practices used in agriculture or mining.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(8) Specific information on:

(a) The amount and distribution of Big Creek crayfish and St. Francis River crayfish habitat;

(b) Which areas that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of these species should be included in the critical habitat designations and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(9) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(10) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designations, and the benefits of including or excluding areas that may be impacted.

(11) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(12) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Columbia, Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified above in DATES. Such requests must be sent to the address shown in **FOR FURTHER**

INFORMATION CONTACT. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Previous Federal Actions

There have been no previous Federal actions for these species, and the Service's status review was undertaken on a voluntary basis as a discretionary action because we were aware of information that these species may be in danger of extinction. Neither species was petitioned for listing.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Big Creek crayfish and the St. Francis River crayfish. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial). The SSA report underwent independent peer review by scientists with expertise in crayfish biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA report and other materials relating to this proposal can be found on the Midwest Region website at *https://www.fws.gov/midwest/* and at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Big Creek crayfish and the St. Francis River crayfish is presented in the SSA report (Service 2018, entire).

The Big Creek crayfish (*Faxonius peruncus*) is a small, olive-tan crayfish with blackish blotches and specks over the upper surface of pincers, carapace, and abdomen. Length of adult individuals ranges from 1.1 to 2.2 inches (in) (2.8 to 5.6 centimeters (cm)). The St. Francis River crayfish (*Faxonius quadruncus*) is a small, dark brown crayfish with blackish blotches or specks over the upper surfaces of the pincers, carapace, and abdomen. Length of adult individuals of St. Francis River crayfish have been observed to be similar to adult Big Creek crayfish.

Both the Big Creek crayfish and the St. Francis River crayfish have localized distributions in the Upper St. Francis River watershed upstream of Wappapello Dam in Iron, Madison, St. Francois, Washington, and Wayne Counties in southeastern Missouri. The Big Creek crayfish appears most abundant in Big Creek and other streams on the west side of the watershed and primarily Twelvemile Creek subwatersheds on the east side, while the St. Francis River crayfish mainly inhabits the upper St. Francis River tributaries on the upper end of the Upper St. Francis River watershed. Despite occupying the Upper St. Francis River watershed at a coarse spatial scale, these two species have been observed at the same location only seven times and exhibit mostly discrete distributions (Westhoff 2011, pp. 34–36).

Big Creek crayfish are generally found in streams with widths less than 33 feet (ft) (10 meters (m)) under small rocks or in shallow burrows in headwater streams and small rocky creeks in shallow depths. St. Francis River crayfish are generally found in swiftly moving streams under rocks and boulders in small headwater streams and up to moderately larger rivers. St. Francis River crayfish may prefer pool/backwater areas and run macrohabitats over faster riffles.

Given that both the Big Creek crayfish and St. Francis River crayfish are habitat generalists (Westhoff 2017 pers. comm.) and not all reaches of streams within the watershed have been sampled, it is likely that the species occur at more locations in the watershed. Therefore, we defined the species' ranges as the streams within subwatersheds (12-digit hydrologic units) known to be occupied by each species (Figure 1). We consider these ranges to be a more accurate depiction of the actual ranges of the Big Creek Crayfish and St. Francis River Crayfish than using only known locations. Within its range, the Big Creek Crayfish is found in 983 river miles (rmi) (1,581 river kilometers (km) in the Upper St. Francis watershed. The St. Francis River Crayfish is found in 944 rmi (1,519 km). Within the St. Francis River mainstem (where it is a 5th order stream), the Big Creek crayfish intermittently occurs in 86 rmi (139 km) and the St. Francis River crayfish occurs in 99 rmi (159 km). Few individuals of any crayfish species have been collected in these reaches (Westhoff 2018 pers. comm.) and the crayfishes likely only occur in the mainstem intermittently, using these areas for connectivity between subwatersheds.

Individuals of the Big Creek crayfish and St. Francis River crayfish mate in the fall. Big Creek crayfish females generate an average of 61 eggs, whereas St. Francis River crayfish females generate an average of 43 to 81 eggs. The normal lifespan for both the Big Creek crayfish and the St. Francis River crayfish appears to be about 2 years (Pflieger 1996, pp. 116, 122). We presume that both species' feeding habits are similar to those of other crayfish species in the region, and their diets likely consist of plant detritus, periphyton, and invertebrates.

Based on genetic analyses, we consider the Big Creek crayfish species to consist of two populations (referred to as the Main and Twelvemile Creek populations), whereas the St. Francis River crayfish species consists of a single population (Figure 1). We have no evidence to suggest that there has been a reduction in the number of populations for either species from historical conditions. For analytical purposes and for better representation of groups of individuals that occupy the same area and are subject to the same environmental pressures, we defined finer-scale subpopulations. We consider a subpopulation to be those individuals that are able to interbreed and occur within the same stream reach of occupied habitat. Therefore, multiple subpopulations make up the single population (and species) of the St. Francis River crayfish and multiple subpopulations make up the two populations of the Big Creek crayfish. In order for Big Creek crayfish and St. Francis River crayfish subpopulations to be healthy, they require a population size and growth rate sufficient to withstand natural environmental fluctuations, and habitat of sufficient quantity and quality to support all life stages (specific details of each of these requirements remains unclear). Healthy subpopulations of each species also require gene flow among subpopulations and a native community structure free from nonnative crayfish species that may out compete and ultimately displace the two species (for more information, see chapter 2 of the SSA report).

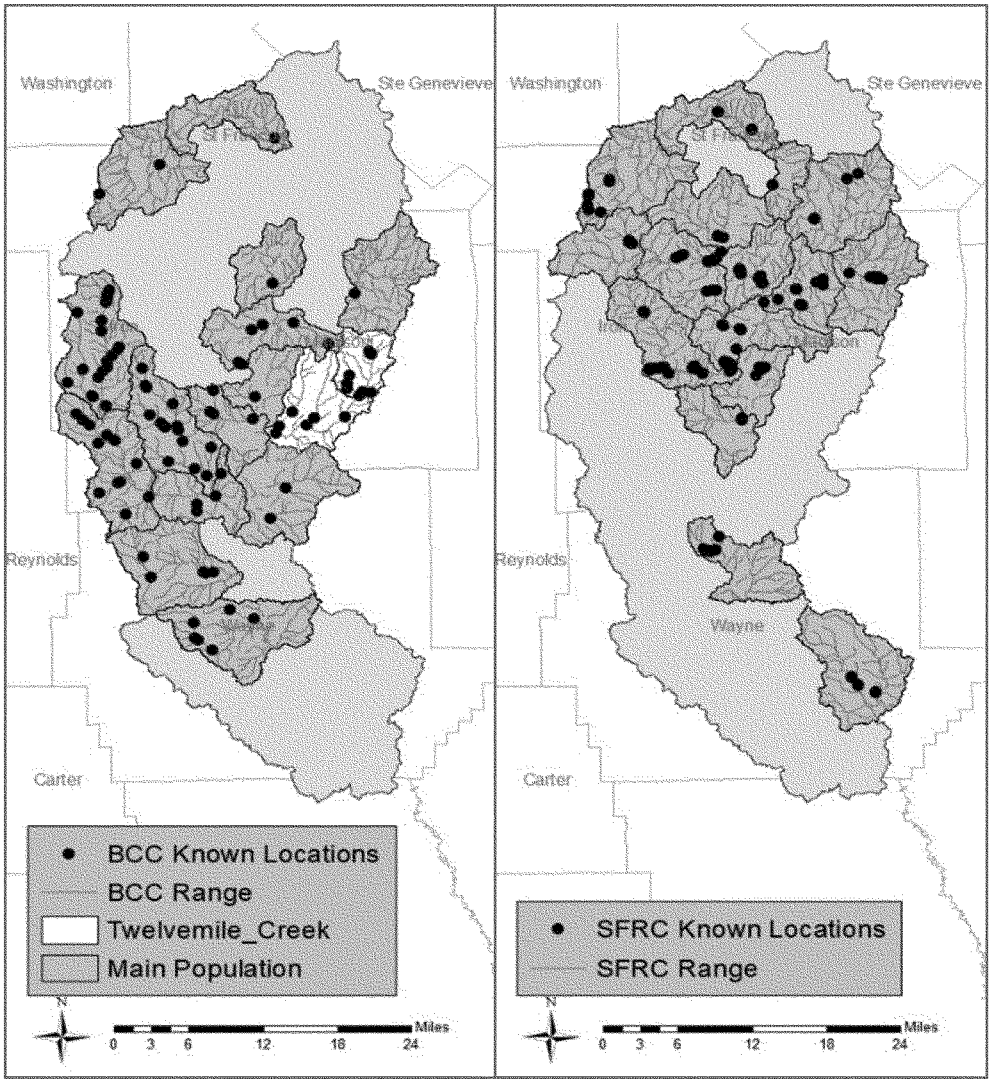


Figure 1. Distribution of the Big Creek crayfish (BCC; left) and St. Francis River crayfish (SFRC; right) in the Upper St. Francis River watershed, Missouri. The St. Francis River mainstem is not included because crayfish movement is only intermittent.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal 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, 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. The SSA report documents the results of our comprehensive biological status review for each species, including an assessment of the potential stressors to the species. Those results do not represent a decision by the Service on whether the species should be proposed for listing as an endangered species or threatened species under the Act. They do, however, provide the scientific basis that informs our regulatory decisions, which involves the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found on the Midwest Region website at *https://www.fws.gov/midwest/* and at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020.

Summary of Analysis

The SSA process can be categorized into three sequential stages. During the first stage, we evaluate individual species' life-history needs. The next stage involves an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involves making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process uses the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

To assess the viability of the Big Creek crayfish and the St. Francis River crayfish, we used the three conservation biology principles of resiliency, representation, and redundancy (together, the 3 Rs) (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes); and redundancy supports the ability of the species to withstand catastrophic events (for example, large-scale droughts, floods, or chemical spills). In general, the more redundant and resilient a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The Big Creek crayfish and St. Francis River crayfish viability over time, is influenced by their resiliency, adaptive capacity (representation), and redundancy. Resiliency, in the case of the crayfishes, is best measured by the number, distribution, and health of populations (or subpopulations) across the species' ranges. Representation for both species can be measured by the number and distribution of healthy subpopulations across areas of unique adaptive diversity. For the Big Creek crayfish, this includes the Twelvemile Creek and Main populations; for the St. Francis River crayfish, it includes the species' entire range. Redundancy can be measured for the two species through the duplication and distribution of resilient subpopulations across the species' ranges.

Risk Factors for the Big Creek Crayfish and St. Francis River Crayfish

A multitude of natural and anthropogenic factors may impact the status of species within aquatic systems. The largest threat to the future viability of the Big Creek crayfish and the St. Francis River crayfish is displacement by a nonnative crayfish species. Contamination from heavy metal mining and habitat degradation from sedimentation also affects the species' viabilities. A brief summary of these primary stressors is presented below; for a full description of these stressors, refer to chapter 3 of the SSA report for each species.

Non-native Crayfish

The introduction of non-native crayfish is one of the primary factors contributing to declining crayfish populations (Taylor et al. 2007, p. 374). Non-native crayfish species can displace native crayfishes through competition, differential predation, reproductive interference or hybridization, disease transmission, or a combination of these mechanisms (Lodge *et al.* 2000, pp. 9 & 12). Described below are effects of an invasive crayfish species on the Big Creek Crayfish and St. Francis River Crayfish.

Reproductive interference in the form of hybridization may be the main mechanism driving the displacement of the Big Creek crayfish and the St. Francis River crayfish. Genetic evidence of hybridization between the woodland crayfish and the Big Creek crayfish, as well as between the woodland crayfish and the St. Francis River crayfish has been documented (Fetzner *et al.* 2016 pp. 19–26). Alleles from both parental species detected in individuals in areas invaded by the woodland Crayfish, suggests that both native species readily hybridize with the woodland Crayfish (Fetzner *et al.* 2016, p. 28). Genetic swamping (a process by which the local genotype is replaced) appears to be the mechanism that leads to the eventual full displacement of the native species of crayfish.

In 1984, the woodland crayfish, endemic to southeastern Missouri, was first documented in the Upper St. Francis River watershed, which is outside of its native range (Pflieger 1996, p. 82). It is estimated that by 2008 (22 years later), the crayfish had invaded 5–20 percent of the total 3,225 rmi in the watershed (DiStefano and Westhoff 2011, pg. 40). Within areas invaded by the woodland crayfish, the distribution and abundance of the Big Creek crayfish and St. Francis River crayfish has been substantially impacted. In one stream, the Big Creek crayfish constituted 87 percent of the crayfish community in areas not invaded by the woodland crayfish, but only 27 percent in invaded areas (DiStefano and Westhoff 2011, 40).

Similarly, the St. Francis crayfish constituted 50 percent of the crayfish community in non-invaded areas, but only 13 percent in invaded areas of the stream. In the invaded areas of these streams, the woodland crayfish had become the dominant species, constituting 57–86 percent of the crayfish community (DiStefano and Westhoff 2011, p. 40).

The woodland crayfish's impact on abundance of the Big Creek crayfish and St. Francis River crayfish has resulted in the range contraction of both of the native species. In one stream, the range of the Big Creek crayfish contracted 9.1 rmi (14.7 km) from 2004 to 2009, simultaneous to the woodland crayfish expansion in the stream (DiStefano and Westhoff 2011, p. 40). In three other streams, the range of the St. Francis crayfish contracted in conjunction with the woodland crayfish invasion (Riggert *et al.* 1999, p. 1999; DiStefano 2008b, p. 419).

The woodland crayfish has been documented throughout much of the western portion of the Upper St. Francis River watershed (Figure 2). Though range contractions of the Big Creek crayfish and St. Francis River crayfish have only been documented in 4 streams, we conclude that the patterns of displacement and subsequent extirpation are likely happening throughout all of the invaded areas in the Upper St. Francis River watershed, with 5 of the 16 Big Creek crayfish watersheds invaded (31 percent) and 4 of the 16 St. Francis River crayfish subwatersheds invaded (25 percent). In addition, the known locations of the woodland crayfish are likely an under-representation of where the species is present in the watershed given that 1) the majority of locations were documented prior to 2010 and the species can expand at a rate as high as 745 yards (y) per year (681 m per year) in the upstream direction and 2,499 y per year (2,285 m year) in the downstream direction (DiStefano and Westhoff 2011, pp. 38, 40); and 2) the woodland crayfish has already been introduced at several locations throughout the watershed and has likely been introduced at additional, undocumented locations (it is not feasible to survey every stream throughout the watershed). There is currently no means to slow or stop the spread of the woodland crayfish.

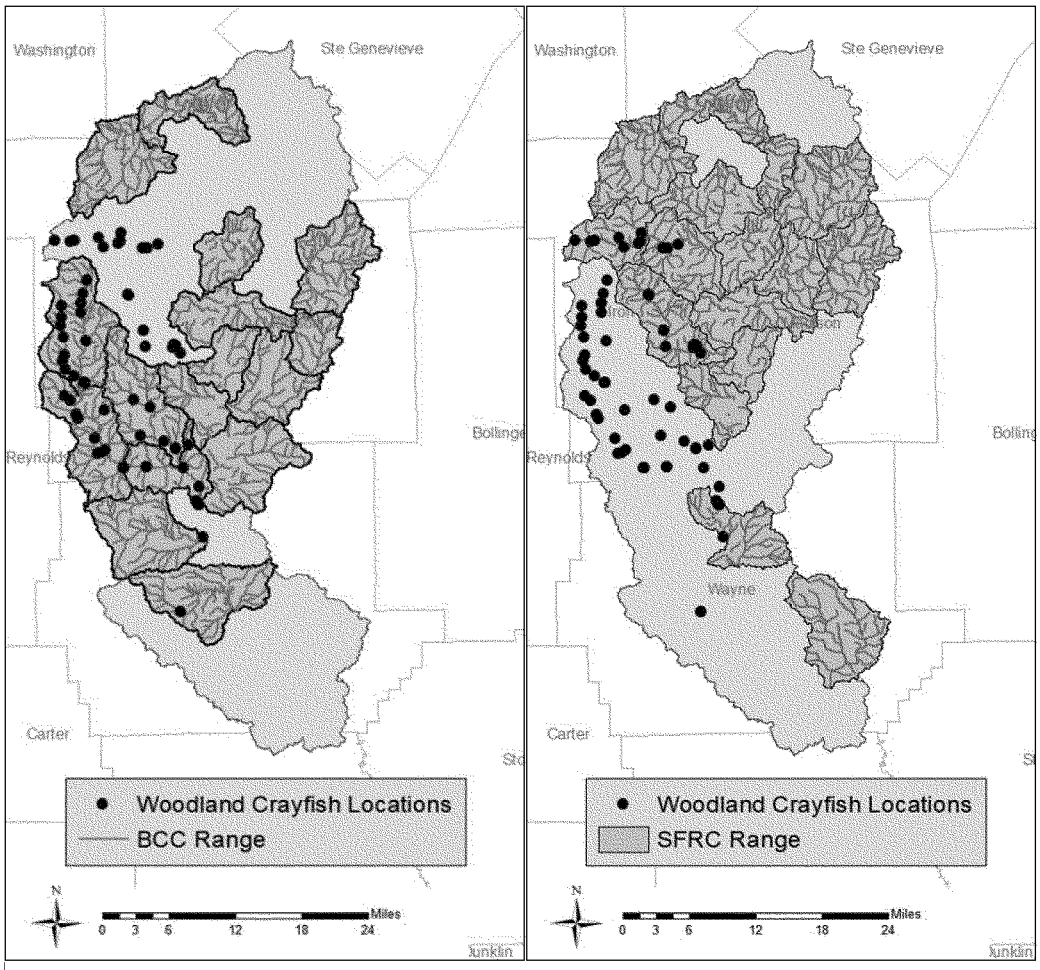


Figure 2. Known woodland crayfish locations relative to the distribution of the Big Creek crayfish (BCC; left) and St. Francis River crayfish (SFRC; right) in the Upper St. Francis River watershed, Missouri.

The main mechanism driving the displacement of the Big Creek crayfish and the St. Francis River crayfish appears to be reproductive interference by the woodland crayfish in the form of hybridization. Woodland crayfish have been observed engaging in mating behavior with St. Francis River crayfish (Westhoff 2011, p. 117). There is also genetic evidence of hybridization between the woodland crayfish and the Big Creek crayfish, as well as between the woodland crayfish and the St. Francis River crayfish (Fetzner *et al.* 2016 pp. 19–26), and at least some of the hybrid young appear to be viable (Fetzner *et al.* 2016, p. 29).

Contamination by Heavy Metal Mining

Southeastern Missouri has been a primary producer of lead since the early 1700s, in an area referred to as the Old Lead Mining Belt and more recently in an area referred to as the New Lead Mining Belt. Although most mining ceased in the 1970s, waste from mining operations is still present in the landscape, resulting in contamination of fish and other aquatic biota, alteration of fish and invertebrate communities, and public health advisories against human consumption of lead-contaminated fish (Czarneski 1985, pp. 17–23; Schmitt *et al.* 1993, pp. 468–471). The relocation of mine waste (chat) throughout the area as topsoil, fill material, and aggregate for roads, railroads, concrete, and asphalt has further expanded the area of contamination, as has aerial deposition from heavy metal smelters and the use of lead mining tailings for agricultural purposes due to their lime content. All of these uses have contributed to contamination of streams in portions of the Upper St. Francis River watershed. As a result, 32.4 rmi (52.1 km) of Little St. Francis River were added to the Environmental Protection Agency's (EPA) 303(d) list of impaired waters for not meeting water quality standards for lead. In 2012, a portion of Big Creek (34.1 rmi) (54.9 km) was also added to the EPA's 303(d) list for not meeting water quality standards for lead and cadmium; that stream reach recently was removed from the 303(d) list for lead (in sediment) but remains listed for cadmium.

Studies conducted in southeastern Missouri and other areas demonstrate that heavy metal contamination adversely affects riffle-dwelling crayfish. In a study conducted in a watershed adjacent to that of the Upper St. Francis River, metal concentrations in crayfish at sites downstream of mining activities were significantly higher than those at reference sites (Allert *et al.* 2008, pp. 100–101). Significantly lower crayfish densities were observed at sites downstream of mining activities than those at reference sites, indicating that metals associated with mining activities have negative impacts on crayfish populations in Ozark streams (Allert *et al.* 2008, p. 100). Similar results were observed in other areas impacted by mining wastes (including sites in the Upper St. Francis River watershed), with sites downstream of mining activities having significantly higher metal concentrations in crayfish, reduced densities of crayfish (from 80 to 100 percent) (Allert *et al.* 2008, pp. 100–101; Allert *et al.* 2012, p. 567), and significantly lower survivorship (Allert *et al.* 2009, pp. 1210–1211). The mechanisms by which crayfish can be impacted by heavy metal contamination includes interference with orienting (Hubschman 1967, pp. 144–147; Lahman and Moore 2015, pp. 443–444), inhibition of respiration or aerobic metabolism (Khan *et al.* 2006, pp. 515–517); and increased susceptibility to predation (Wiggenton *et al.* 2010, p. 97). Approximately 22 percent of the Big Creek crayfish's range and 16 percent of the St. Francis River crayfish's range occur in areas with contaminated soil.

Sedimentation

In the Upper St. Francis River watershed, the absence of a deep cherty (a hard, dark, opaque rock composed of silica) residuum in the igneous Ozark uplift, combined with the formation of erosion-resistant upland soils, results in little gravel accumulation in alluvial floodplain soils. Streambank soils also are more cohesive than in most Ozark streams because of lower densities of gravel, with channel substrates containing a significant proportion of stable cobble, stone, and boulders, which provide habitat for crayfishes (Boone 2001, p. GE1). However, similar to many Ozark streams, streams within the Upper St. Francis River watershed may experience increased sedimentation in the future if land use changes or if riparian corridors are cleared. There have been impacts to three streams within the watershed that experienced excessive sedimentation due to eroding or breached mine tailings (Boone 2001, p. WQ4; DiStefano 2008a, p. 191). Breaches can spill a large volume of tailings, such as the 1,500 cubic y (1,200 cubic m) spilled into a stream in 1992 (Boone 2001, p. WQ4), and it can take multiple years for the aquatic community to begin to recover following a breach. Excessive deposition of fine sediment can cover rocks and cavities used by the Big Creek crayfish and St. Francis River crayfish as refugia (an area in which a population of organisms can survive through a period of unfavorable conditions). The loss of refugia likely results in reduced foraging habitat, thereby reducing carrying capacity and the density of subpopulations. The loss of refugia may also increase competition with the woodland crayfish and potentially facilitate displacement of the Big Creek crayfish and St. Francis River crayfish. The loss, caused by sedimentation, likely also increases predation risk. Crayfish presence is dependent on rocks embedded in little or no sediment and open interstitial spaces (Loughman *et al.* 2016, p. 645; Loughman *et al.* 2017, p. 5).

Synergistic Effects

In addition to individually affecting the species, it is likely that several of the above-summarized risk factors are acting synergistically or additively on both species. The combined impact of multiple stressors is likely more harmful than a single stressor acting alone. For example, in areas affected by lead mining contamination, the rate of displacement of Big Creek crayfish and St. Francis River crayfish by woodland crayfish may increase. Additionally, in areas invaded by the woodland crayfish, the loss of refugia from sedimentation may increase competition between the native species and the woodland crayfish. These combinations of stressors on the sensitive aquatic species in this habitat likely impact both native species more severely in combination than any one factor alone.

Conservation Actions

Monitoring and research on the Big Creek crayfish and St. Francis River crayfish have been conducted by the Missouri Department of Conservation (MDC) and various other organizations. Multiple evaluations of effects from lead mining contamination on crayfish, including the St. Francis River crayfish, have been conducted by the U.S. Geological Survey (USGS). Monitoring efforts benefit conservation of the Big Creek crayfish and St. Francis River crayfish by providing information on population health and trends and on the magnitude and extent of threats; research efforts provide information on mechanisms by which threats may impact the native crayfishes.

To help curtail the spread of nonnative crayfish in Missouri, MDC amended the Missouri Wildlife Code in 2011–2012, to increase regulations pertaining to the sale, purchase, and import of live crayfishes. While the virile crayfish (*Faxonius virilis*) may still be commercially sold in the State

for live bait, all other live crayfishes can be imported, sold, or purchased in Missouri only for the purposes of human consumption or as food for captive animals kept by authorized entities (for example, research institutions/agencies, publicly owned zoos) (Missouri Code of State Regulations 2018b, pp. 6–7). This regulation effectively bans the sale and purchase of live crayfish for bait, the import and sale of live crayfishes in pet stores, and the purchase and import of live crayfishes by schools for classroom study, all of which are vectors for crayfish invasions. It is also illegal in Missouri to release any baitfish or crayfish into public waters, except as specifically permitted by the MDC (Missouri Code of State Regulations 2018a, p. 3). These regulations may help reduce the likelihood of future invasions of nonnative crayfishes within the Upper St. Francis River watershed. However, as the woodland crayfish has already been introduced at several locations in the watershed and the regulations will not affect the inevitable spread of that species within the Upper St. Francis River watershed.

Approximately 41 percent of the Upper St. Francis River watershed is in Federal and State ownership, with the majority managed by the U.S. Forest Service as part of the Mark Twain National Forest. The U.S. Forest Service's management efforts benefit stream health by focusing on riparian protection and control and reduction of sediment entering streams. Other major public landowners in the watershed include the MDC, the U.S. Army Corps of Engineers, and the Missouri Department of Natural Resources. Additionally, 5.3 rmi (8.5 km) of Big Creek is designated an ''Outstanding State Resource Water.'' Missouri Outstanding State Resource Waters are high-quality waters with significant aesthetic, recreational, or scientific value and receive special protection against degradation in quality (Missouri Code of State Regulations 2018c, pp. 14, 16). These protections help maintain water quality and minimize additional sedimentation; therefore, these protections may improve the quantity and quality of habitat of the Big Creek crayfish and St. Francis River crayfish.

The EPA has conducted, and has plans to continue, extensive remediation efforts in areas of southeastern Missouri impacted by lead mining, including the Upper St. Francis River watershed. These efforts include sediment, soil, and mine waste removal. The EPA also has funded the development of a watershed master plan for the Little St. Francis River, located in the upper end of the watershed. This plan will identify sources of pollution (related to lead mining) and measures to reduce the pollution.

Current Condition of Species

To evaluate the current (and future viability) of the Big Creek crayfish and the St. Francis River crayfish, we assessed a range of conditions to allow us to consider the species' resiliency, representation, and redundancy. For the purposes of this assessment, populations were delineated using known locations and expanded to a subwatershed scale. As previously stated, we scaled down to a subpopulation level for analytical purposes, as both species have a limited number of populations. In the case of the St. Francis River crayfish, population-level ecology is also species-level ecology because genetic analyses indicate the entire species exists as a single population. Scaling down to the subpopulation level allowed us to better represent and compare groups of individuals at a finer scale. A summary of the current condition of each species is given at the end of this section (Table 1 and Table 2).

The Big Creek crayfish and St. Francis River crayfish currently occur in 16 subwatersheds. In 2008, it was estimated that the woodland crayfish occupied 103 to 403 rmi (166 to 649 km) or 5 to 20 percent of the total 2,004 rmi (3,225 km) in the Upper St. Francis River watershed (DiStefano and Westhoff 2011, p. 40). Based on known locations of the woodland crayfish, we know that 5 of the 16 Big Creek crayfish subwatersheds have been invaded (31 percent) and 4 of the 16 St. Francis River subwatersheds have been invaded (25 percent). We also know that the invasion has resulted in extirpation of the Big Creek crayfish in 9.1 rmi (14.7 km) and of the St. Francis River crayfish in 8.5 rmi (13.7 stream km) (Figure 3). This is likely a sizable underestimate of the actual extent of both range contractions, given that data for known native range contractions represent conditions in only 2 of the 11 streams known to be invaded by the woodland crayfish (the range contractions for each species occurred in different streams).

In addition, the known locations of the woodland crayfish depicted in Figure 3 are likely an under-representation of where the species is present in the watershed given that (1) the majority of locations were documented prior to 2010, (2) the species can expand at a rate as high as 745 yards (y) per year (681 m per year) in the upstream direction and 2,499 y per year (2,285 m year) in the downstream direction (DiStefano and Westhoff 2011, pp. 38, 40) and (3) the woodland crayfish has already been introduced at several locations throughout the watershed and has likely been introduced at additional, undocumented locations (it is not feasible to survey every stream throughout the watershed). Finally, there is currently no means to slow or stop the spread of the woodland crayfish.

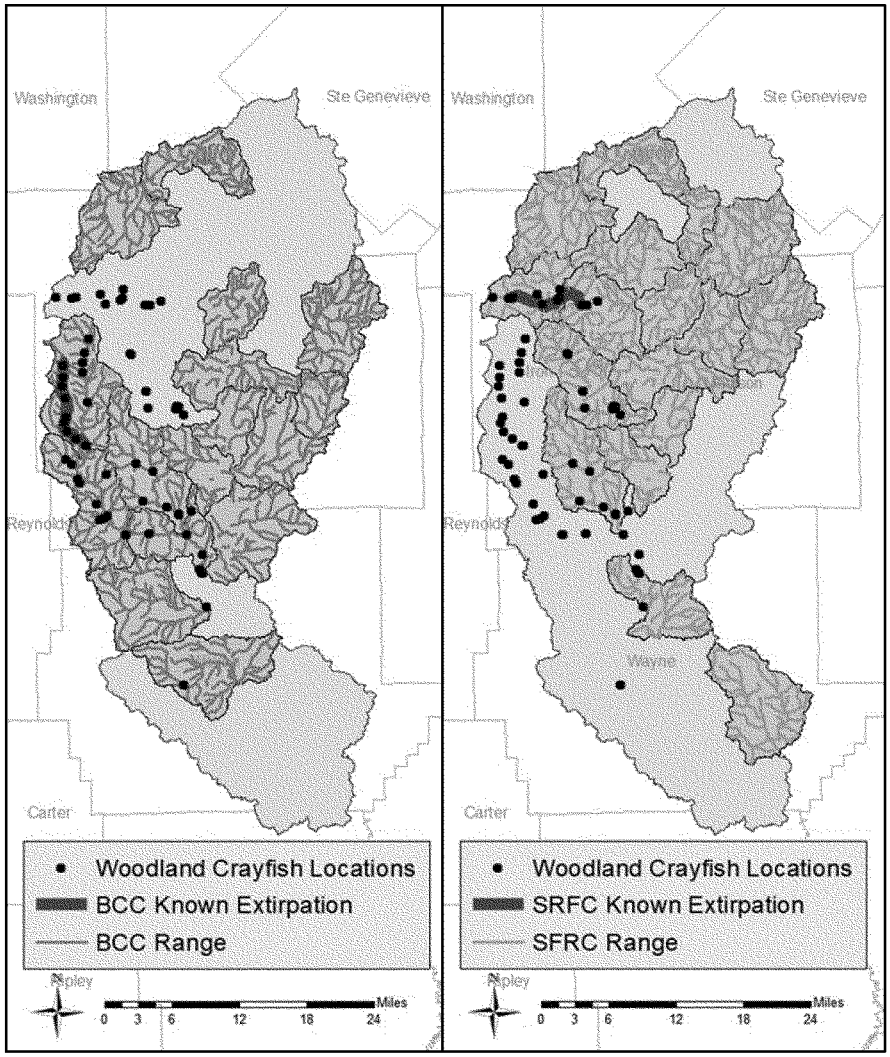


Figure 3. Known locations (as of 2018) of the Woodland Crayfish and stream segments from which the Big Creek Crayfish (BCC; left) and St. Francis River Crayfish (SFRC; right) have been extirpated due to the Woodland Crayfish invasion.

To evaluate the current condition of the Big Creek crayfish and St. Francis River crayfish in terms of the 3Rs, we reviewed available information on health of the subpopulations and queried species experts on the species' representation and redundancy. The full explanation of this analysis can be found in the SSA report; a summary of our conclusions is given below.

Resiliency

Although the Twelvemile Creek population of the Big Creek crayfish has not been invaded by the woodland crayfish, the woodland crayfish has been documented at 30 locations within the Main population, with 5 of the 14 (36 percent) of the population's subwatersheds invaded. Based on the Big Creek crayfish's range contractions and the rate at which the woodland crayfish can expand, we expect that range contractions are happening throughout the other invaded subwatersheds. We also conclude that it is likely that St. Francis River crayfish abundance in the Main population has been substantially reduced from heavy metal contamination given that 208 rmi (335 km) of the 940 rmi (1,514 km), or 22 percent, of the population occurs in areas with heavy metal surface contamination. Studies conducted in nearby watersheds demonstrate that heavy metal contamination reduces abundance. These impacts have reduced resiliency of the Main population and thus resiliency of the Big Creek crayfish has been reduced.

Four of the 16 subwatersheds occupied by the St. Francis River crayfish (25 percent) have been invaded by the woodland crayfish. Similar to the Big Creek crayfish, we expect that contractions of the St. Francis River crayfish are occurring in these areas based on range contractions documented elsewhere and the rate at which the woodland crayfish can expand. Resiliency of the St. Francis River crayfish has been further reduced due to impacts from heavy metal contamination, with 16 percent of the

range occurring in areas with heavy metal contamination.

The narrow ranges of both the Big Creek crayfish and St. Francis River crayfish also inherently make them vulnerable to environmental variation and stochastic events that could affect their entire range (for example, extreme drought or flooding).

Representation

We consider Big Creek crayfish representation as having healthy subpopulations in both the Twelvemile Creek population and the Main population, to maintain the full breadth of adaptive diversity (and, thus, adaptive capacity). There appears to be gene flow throughout most of the Big Creek crayfish's range (Fetzner and DiStefano 2008, p. 12). However, the Big Creek crayfish in the Twelvemile Creek population contain unique haplotypes (a group of alleles that are inherited from a single parent) that were not found anywhere else in the watershed (Fetzner and DiStefano 2008, p. 12). Although the Twelvemile Creek population is currently not impacted by the woodland crayfish, the range of the Main population has been reduced due to woodland crayfish invasion, with 36 percent of the subwatersheds invaded (Table 1 and Table 2). Therefore, the species may have lost some level of representation. For the St. Francis River crayfish, we consider representation as having multiple, healthy subpopulations distributed across the range of the species to maintain the breadth of adaptive diversity (that is, throughout its range in the Upper St. Francis River watershed). Similar to the Big Creek crayfish, some level of representation of the St. Francis River crayfish may have been lost due to documented and undocumented range contractions, with 4 of the 16 (25 percent) of the St. Francis River subwatersheds invaded.

Redundancy

For the purposes of the SSA, we define a catastrophic event as a biotic or abiotic event that causes significant impacts at the population level such that the population cannot rebound from the effects or the population becomes highly vulnerable to normal population fluctuations or stochastic events.

Based on expert input (further described in the SSA report), we do not consider extreme drought or chemical spills as catastrophic events that are likely to have substantial effects on the Big Creek crayfish and St. Francis River crayfish. While these events may not cause a devastating impact to the entire Big Creek crayfish or St. Francis River crayfish populations, the occurrence of extreme droughts or chemical spills would reduce resiliency of the species by potentially extirpating or compromising subpopulations throughout the impacted area (see chapter 3 of the SSA report). However, both species are inherently vulnerable to extreme events or large-scale stressors given their small range, and there has been some reduction of in-population redundancy due to the extirpation of individuals (and subpopulations) in some areas because of woodland crayfish invasion.

TABLE 1—SUMMARY OF BIG CREEK CRAYFISH'S CURRENT CONDITION

	Assessment of current condition
Currently Occupied Stream Distance.	Occurs in approximately 983 rmi (1,581 km) within 16 subwatersheds. However, this does not account for documented and undocumented range contractions that we expect are occurring in 31 percent of the species' subwatersheds due to the woodland crayfish invasion. In addition, 86 rmi (139 km) of stream reaches are likely occupied intermittently by the species due to movement among occupied watersheds.
Health of Subpopulations	In areas invaded by the woodland crayfish (31 percent of occupied subwatersheds), abundance is substantially reduced, with the species completely extirpated in some invaded areas. In areas impacted by lead mining contamination (22 percent of the range), abundance is also likely reduced. In areas not invaded by the woodland crayfish or impacted by lead mining contamination, we presume subpopulations are healthy.
Health of Populations	We presume the Twelvemile Creek population is currently healthy because it does not appear that the woodland crayfish has invaded the population and the population is outside of the area of lead mining contamination. The health of the Main population, however, has been impacted due to documented and undocumented range contractions from the woodland crayfish invasion in 36 percent of the population's subwatersheds. Abundance has also likely been reduced in 22 percent of the Main population due to heavy metal contamination.
Resiliency	Reduced due to documented and undocumented range contractions in 31 percent of the Big Creek crayfish's subwatersheds and expected reduced abundance in 22 percent of the range due to heavy metal contamination.
Representation	Somewhat reduced ecological diversity due to documented and undocumented range contractions in 25 percent of the Big Creek crayfish's subwatersheds.
Redundancy	Somewhat reduced due to documented and undocumented range contractions in 36 percent of subwatersheds in the Main population. The species is also inherently vulnerable to some extreme events given its small range. However, both populations of the species have a high level of redundancy relative to extreme events that affect areas downstream of the source of the event (for example, chemical spills) due to the number of tributaries that they occupy that would not be downstream of the event.

TABLE 2—SUMMARY OF ST. FRANCIS RIVER CRAYFISH'S CURRENT CONDITION

	Assessment of current condition
Currently Occupied Stream Distance.	Occurs in approximately 944 rmi (1,519 km) within 16 subwatersheds. However, this does not account for documented and undocumented range contractions that we expect are occurring in 25 percent of the species' subwatersheds due to the woodland crayfish invasion. In addition, 99 rmi (159 km) of stream reaches are likely occupied intermittently by the species due to movement among occupied watersheds.
Health of Subpopulations	In areas invaded by the woodland crayfish (25 percent of occupied subwatersheds), abundance is substantially reduced, with the species completely extirpated in some invaded areas. In areas impacted by lead mining contamination (16 percent of the range), abundance is also likely reduced. In areas not invaded by the woodland crayfish or impacted by lead mining contamination, we presume subpopulations are healthy.

TABLE 2—SUMMARY OF ST. FRANCIS RIVER CRAYFISH'S CURRENT CONDITION—Continued

	Assessment of current condition
Resiliency	Reduced due to documented and undocumented range contractions in 25 percent of the St. Francis River crayfish's subwatersheds. Also reduced due to reduced abundance in 16 percent of the range due to heavy metal contamination.
Representation	Somewhat reduced ecological diversity due to documented and undocumented range contractions in 25 percent of the St. Francis River crayfish's subwatersheds.
Redundancy	Somewhat reduced due to documented and undocumented range contractions in 25 percent of the St. Francis River crayfish's subwatersheds. The species is also inherently vulnerable to some extreme events given the species' small range, and there has been some reduction in redundancy due to reduction of the range. However, the species have a high level of redundancy relative to extreme events that affect areas downstream of the source of the event (for example, chemical spills) due to the number of tributaries that they occupy that would not be downstream of the event.

Future Scenarios

For the purpose of this assessment, we define viability as the ability of the species to sustain populations in the wild over time. To evaluate future conditions of the Big Creek crayfish and St. Francis River crayfish, we predicted the expansion of the nonnative woodland crayfish within the ranges of the native crayfishes. We asked biologists with expertise on crayfishes to estimate the future expansion rate in the Upper St. Francis River watershed, the impact on Big Creek crayfish and St. Francis River crayfish abundances, and the length of time for those impacts to be fully realized. A full description of the expert elicitation meeting methodology and results are available in the SSA report (Service 2018, pp. 36–47 & 64–70). As a way to characterize uncertainty in predicting future conditions and to capture the entire breadth of plausible future conditions, we developed ''reasonable best,'' ''reasonable worst,'' and ''most likely'' scenarios that represent the plausible range of the Big Creek crayfish's and St. Francis River crayfish's future conditions (see Table 3, below). Each of the scenarios is based on the expert-elicited estimates of the woodland crayfish's expansion rates, impacts of the invasion, and time for impacts to be fully realized. For each of the scenarios, we predicted the extent of future expansion of the woodland crayfish at 10, 25, and 50 years into the future. We then calculated the extent of the Big Creek crayfish's and St. Francis River crayfish's ranges that would be affected under each scenario and described effects to abundance based on the experts' projections. Because we used a finer scale data, we present results in river miles invaded, rather than subwatersheds invaded (as we did to assess current conditions). Additional details on the expert elicitation and a summary of results can be found in appendix B of the SSA report. Below is a summary of the results from the SSA; for further details on the methods, assumptions, and results, see chapter 5 of the SSA report. A summary of predicted impacts in 50 years for both species is summarized in Tables 4 and 5 below.

TABLE 3—EXPLANATION OF SCENARIOS USED TO PREDICT THE FUTURE CONDITION OF BIG CREEK CRAYFISH AND ST. FRANCIS RIVER CRAYFISH

Scenario	Estimates used
Reasonable Best	• Lowest plausible expansion rate of the woodland crayfish. • Lowest level of predicted impact on abundance of Big Creek crayfish and St. Francis River crayfish. • Highest number of years for impacts to be fully realized.
Reasonable Worst	• Highest plausible expansion rate of the woodland crayfish. • Highest level of predicted impact on abundance of Big Creek crayfish and St. Francis River crayfish. • Lowest number of years for impacts to be fully realized.
Most Likely	• Most likely expansion rate of the woodland crayfish. • Most likely level of predicted impact on abundance of Big Creek crayfish and St. Francis River crayfish. • Most likely number of years for impacts to be fully realized.

Big Creek Crayfish

Under the ''reasonable best'' scenario, we expect the woodland crayfish invasion will expand to 25 percent of the Big Creek crayfish Main population in 10 years, constituting 24 percent of the species' range. In 25 years, 35 percent of the Big Creek crayfish Main population will have been invaded, constituting 33 percent of the species' range. In 50 years, 49 percent of the Main population will be invaded, constituting 46 percent of the species' range. The Twelvemile Creek population is not predicted to be invaded in 25 or 50 years under this scenario. In areas invaded by the woodland crayfish, abundance is predicted to be reduced by over 50 percent in 10 to 20 years.

Under the ''reasonable worst'' scenario, we expect 44 percent of the Main population and 0.2 percent of the Twelvemile Creek population will be invaded by the woodland crayfish in 10 years, constituting 42 percent of the Big Creek crayfish's total range. In 25 years, 70 percent of the Main population and 81 percent of the Twelvemile Creek population will be invaded by the woodland crayfish, constituting 70 percent of the Big Creek crayfish's total range. In 50 years, 90 percent of the Main population and 100 percent of the Twelvemile Creek population will be invaded, constituting 91 percent of the species' range. In areas invaded by the woodland crayfish, abundance is predicted to be reduced by approximately 100 percent (that is, extirpation) in less than 10 years.

Under the ''most likely'' scenario, we expect 28 percent of the Big Creek crayfish Main population will be invaded by the woodland crayfish in 10 years, constituting 27 percent of the species' range. In 25 years, 44 percent of the Main population and 6 percent of

the Twelvemile Creek population will be invaded by the woodland crayfish, constituting 42 percent of the Big Creek crayfish's total range. In 50 years, 64 percent of the Main population and 56 percent of the Twelvemile Creek population will be invaded, constituting 64 percent of the species' range. In areas invaded by the woodland crayfish, abundance will be reduced by approximately 100 percent (that is, extirpation) in less than 10 years.

Given that there are currently no known feasible measures to curtail the woodland crayfish invasion for the long term, we consider it extremely likely that the invasion will continue. Based on our use of expert-elicited estimates of the rate of expansion and the resulting impacts on the Big Creek crayfish, we are also reasonably certain that we can predict the plausible range of future conditions within 50 years. Here, we discuss the species' future condition in terms of the next 50 years (Summarized below in Table 4.); 10- and 25-year future conditions are discussed (beyond what was stated above) in the SSA report. As previously stated, resiliency of the Big Creek crayfish has already been reduced from historical conditions due to range contractions in 31 percent of occupied subwatersheds caused by invasion of the woodland crayfish. Resiliency also has likely been reduced due to lead mining contamination in 22 percent of the crayfish's range. Using the modeling results (that represent the range of all future scenarios), we predict that within 50 years resiliency of the species will continue to be reduced due to a 50 to 100 percent reduction in abundance in 49 to 90 percent of the Main population and 0 to 100 percent of the Twelvemile Creek population. In addition, if other threats (aside from woodland crayfish invasion and lead mining contamination) such as drought, flood events, disease, and degraded water quality, remain the same or increase, resiliency will be further reduced by these threats. Thus, our modeled results represent the minimum amount of the species' range that is expected to be impacted within 50 years because the decline in resiliency only considers impacts of the woodland crayfish invasion and none of the other stressors mentioned above that affect the Big Creek crayfish.

We predict that the Big Creek crayfish will continue to lose ecological diversity, given the expected expansion of the woodland crayfish and the resulting impact on subpopulations in both the Main and Twelvemile Creek populations. Both populations are expected to experience a 50 to 100 percent reduction in abundance in invaded areas. For the Twelvemile Creek population, in 50 years there may be as much as 100 percent of the population's range invaded, whereas up to 90 percent of the Main population's range may be invaded in the same time. Given the unique haplotypes contained in the Twelvemile Creek population, the reduced abundance of subpopulations in the majority of that population, or especially the complete loss of that population, would represent an appreciable reduction in the species' representation.

The Big Creek crayfish is inherently vulnerable to extreme events and other stressors, given the species' small range. There has been already been some reduction in redundancy due to documented and undocumented range contractions in 36 percent of subwatersheds in the Main population. Based on results of the future scenario modeling, we expect that within 50 years, redundancy of the Big Creek crayfish will be further reduced by the predicted 50 to 100 percent reduction in abundance in 49 to 90 percent of the range of the Main population and 0 to 100 percent of the range of the Twelvemile Creek population. Because the Twelvemile Creek population consists of only one subwatershed, it will be more vulnerable to extreme events if multiple sub-tributaries are impacted by the woodland crayfish invasion.

St. Francis River Crayfish

Under the ''reasonable best'' scenario, we expect 12 percent of the St. Francis River crayfish's range will be invaded by the woodland crayfish in 10 years. In 25 years, 21 percent of the range will have been invaded, and 33 percent of the range will have been invaded in 50 years. In areas where the woodland crayfish has invaded, abundance is predicted to be reduced by over 10 to 50 percent in 30 to 40 years.

Under the ''reasonable worst'' scenario, we expect 30 percent of the St. Francis River crayfish's range will be invaded by the woodland crayfish in 10 years. In 25 years, 56 percent of the range will have been invaded, and 81 percent of the range will have been invaded in 50 years. In areas where the woodland crayfish has invaded, abundance is predicted to be reduced by approximately 100 percent (that is, extirpation) in less than 10 years.

Under the ''most likely'' scenario, we expect 18 percent of the St. Francis River crayfish's range will be invaded by the woodland crayfish in 10 years. In 25 years, 32 percent of the range will have been invaded, and 50 percent of the range will have been invaded in 50 years. In areas where the woodland crayfish has invaded, abundance is predicted to be reduced by 50 to 100 percent in 10 to 30 years (Table 5).

Similar to the Big Creek crayfish, we are also reasonably certain that we can predict the plausible range of future conditions for the St. Francis River crayfish within 50 years because there are no known feasible measures to curtail the spread of the woodland crayfish. Here, we discuss the species' future condition over the next 50 years; 10- and 25-year future conditions are discussed (beyond what was stated above) in the SSA report. As previously stated, resiliency of the St. Francis River crayfish has already been reduced from historical conditions due to effects of the woodland crayfish invasion in 25 percent of subwatersheds occupied by the St. Francis River crayfish and also from lead mining contamination in 22 percent of the species' range. Based on the modeling results (the range of all future scenarios), we predict that resiliency of the species will continue to be reduced due to the woodland crayfish invasion and resulting 10 to 100 percent reduction in abundance in an estimated 33 to 81 percent of the range within 50 years. If threats other than the woodland crayfish and lead mining contamination, such as drought, flood events, disease and degraded water quality remain the same or increase, resiliency will be further reduced. Like the Big Creek crayfish, our modeled results represent the minimum amount of the species' range that is expected to be impacted within 50 years because the decline in resiliency only considers impacts of the woodland crayfish invasion and none of the other stressors mentioned above that affect the St. Francis River crayfish.

There has already been some loss in St. Francis River crayfish's representation due to the loss of the subpopulations (and therefore ecological diversity) impacted by the woodland crayfish invasion and impacts of lead mining contamination. The reduction in representation is expected to continue given the predicted 10 to 100 percent reduction in abundance in 33 to 81 percent of the species' range, based on the results of all future scenarios.

The St. Francis River crayfish is inherently vulnerable to extreme events and stressors, given the species' small range and single population, and there has been some reduction in redundancy due to range reduction and reduced abundance of subpopulations due to the woodland crayfish invasion and lead mining contamination. Similar to representation, we expect that

redundancy of the St. Francis River crayfish will be further reduced by the predicted 10 to 100 percent reduction in abundance in 33 to 81 percent of the species' range within 50 years as more tributaries are invaded and subpopulations are extirpated.

TABLE 4—THE RANGE OF PREDICTED IMPACTS TO THE BIG CREEK CRAYFISH FROM THE WOODLAND CRAYFISH AT 50 YEARS BASED ON EXPERT INPUT

	Reasonable best (percent)	Most likely (percent)	Reasonable worst (percent)
Percent of Main population invaded	48.7	64.1	90.4
Percent of Twelvemile Creek population invaded	0	55.6	100
Percent of total range invaded	46.2	63.7	90.9
Percent reduction in abundance in invaded areas	>50	~100	~100

TABLE 5—THE RANGE OF PREDICTED IMPACTS TO THE ST. FRANCIS RIVER CRAYFISH FROM THE WOODLAND CRAYFISH AT 50 YEARS BASED ON EXPERT INPUT

	Reasonable best (percent)	Most likely (percent)	Reasonable worst (percent)
Percent of range invaded	33.2	49.5	81.0
Percent reduction in abundance in invaded areas	10 to 50	50 to 100	~100

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

Both Big Creek crayfish and the St. Francis River crayfish face threats from nonnative crayfish invasion (Factor E), declines in water quality (due to lead mining, sedimentation, etc.) (Factor A), and extreme events (drought, chemical spill, or both) (Factors A and E). There are no existing regulatory mechanisms that are adequate to reduce these threats to a level that the species do not warrant listing (Factor D). Given current and future decreases in resiliency, populations will become more vulnerable to extirpation from stochastic events, thereby resulting in concurrent losses in representation and redundancy. The range of plausible future scenarios for the Big Creek crayfish and the St. Francis River crayfish suggests significant reductions in viability into the future.

In 2008, the woodland crayfish, which is not native to the Upper St. Francis River watershed, was estimated to occupy between 103 and 403 rmi (166 to 649 km, or 5 to 20 watershed. Based on known locations of the woodland crayfish, we know that 5 of the 16 Big Creek crayfish subwatersheds have been invaded (31 percent) and 4 of the 16 St. Francis River subwatersheds have been invaded (25 percent). We also know that the invasion has resulted in extirpation of the Big Creek crayfish in 9.1 rmi (14.7 km) and of the St. Francis River crayfish in 8.5 rmi (13.7 stream km). This is likely a sizable underestimate of the actual extent of both range contractions, given that this represents conditions in only 2 of the 11 streams known to be invaded by the woodland crayfish (the range contractions for each species occurred in different streams). In addition, the known locations of the woodland crayfish are likely an under-representation of where the species is present in the watershed given that (1) the majority of locations were documented prior to 2010, (2) the species can expand at a rate as high as 745 yards (y) per year (681 m per year) in the upstream direction and 2,499 y per year (2,285 m year) in the downstream direction (DiStefano and Westhoff 2011, pp. 38, 40); and (3) the woodland crayfish has already been introduced at several locations throughout the watershed, has likely been introduced at additional, undocumented locations (it is not feasible to survey every stream throughout the watershed) and the invasion has likely progressed since the development of the SSA report and this proposed rule. There is currently no means to slow or stop the spread of the woodland crayfish.

Our analysis of the Big Creek crayfish's and the St. Francis River crayfish's current and future conditions based on the increasing threat of the woodland crayfish invasion and the continuing threat of contamination, as well as the consideration of conservation efforts discussed above, show that the viability for both the Big Creek crayfish and the St. Francis River crayfish will continue to decline such that they are likely to become in danger of extinction throughout all of their ranges within the foreseeable future.

First, we considered whether these species are presently in danger of extinction and determined that proposing endangered status is not appropriate. The current conditions as assessed in the SSA show that the species exist throughout most of their historical ranges and the nonnative woodland crayfish has only displaced a small portion of both species' in their ranges. Although representation has declined in some small amount, ecological diversity (and, therefore, adaptive capacity) likely remains at a level that is currently adequate. Redundancy has also slightly declined since historical conditions, in that there has been a reduction in subpopulations, but we do not believe it has declined significantly. In short, while the primary

threats are currently acting on the species and many of those threats are expected to continue into the future, we did not find that either species is currently in danger of extinction throughout all of its range. However, according to our assessment of the plausible future scenarios, both species are likely to become endangered species in the foreseeable future throughout all of their ranges.

The range of plausible future scenarios of the Big Creek crayfish and St. Francis River crayfish suggests reduced viability into the future. Under the ''most likely'' scenarios for both species, resiliency is expected to decline dramatically within 50 years, given that over 50 percent of the species' ranges are predicted to be invaded by the woodland crayfish. As additional subpopulations become extirpated, this expected reduction in both the number and distribution of healthy (and thus resilient) subpopulations is likely to make the species vulnerable to extreme disturbances and environmental and demographic stochasticity.

Thus, after assessing the best available information, we determine that Big Creek crayfish and St. Francis River crayfish are not currently in danger of extinction, but are likely to become in danger of extinction within the foreseeable future, throughout all of their range.

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. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Everson*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. 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 other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for Big Creek crayfish and St. Francis River crayfish, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the Big Creek crayfish and the St. Francis River crayfish to warrant listing as a threatened species throughout all of its range. We examined the following threats: Nonnative crayfish invasion (Factor E), declines in water quality (due to lead mining, sedimentation, etc.) (Factor A), extreme events (drought, chemical spill, or both) (Factors A and E), and including cumulative effects. There are no existing regulatory mechanisms that are adequate to reduce these threats to a level that the species do not warrant listing (Factor D).

The best scientific and commercial data available indicate that the time horizon on which the species' responses to the above-cited threats are likely to occur is the foreseeable future, not the present or immediate future. In addition, the best scientific and commercial data available do not indicate that any of the species' responses to those threats are more immediate in any portions of the species' range. Therefore, we determine that the Big Creek crayfish and the St. Francis River crayfish are not in danger of extinction now in any portion of their range, but that the species are likely to become in danger of extinction within the foreseeable future throughout all of their range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Big Creek crayfish and the St. Francis River crayfish meet the definition of threatened species. Therefore, we propose to list the Big Creek crayfish and the St. Francis River crayfish as threatened species throughout all of its range in accordance with sections 3(20) 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. Revisions of the recovery 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 of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from the List of Endangered and

Threatened Wildlife or Plants (''delisting''), and for measuring 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. When completed, the recovery outlines, draft recovery plans, and the final recovery plans will be available on our website (*http://www.fws.gov/endangered*), or from our Columbia, Missouri Ecological Services Field 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. If these species are listed, 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 Missouri would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Big Creek crayfish and the St. Francis River crayfish. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Big Creek crayfish and St. Francis River crayfish are only proposed for listing under the Act at this time, please let us know if you are interested in participating in conservation efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for conservation 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 may include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the Service, U.S. Forest Service, or National Park Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

II. Proposed Rule Issued Under Section 4(d) of the Act for the Big Creek Crayfish and the St. Francis River Crayfish

Background

Section 4(d) of the Act states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary'' (16 U.S.C. 1532(3)). Additionally, section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under [section 9(a)(1)] . . . or [section 9(a)(2)].'' Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also approved 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species,'' or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the prohibitions, and exceptions to those prohibitions, will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The Service has developed a species-specific 4(d) rule that is designed to address the Big Creek crayfish's and the St. Francis River crayfish's specific threats and conservation needs. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this 4(d) rule is necessary and advisable to provide for the conservation of the Big Creek crayfish and the St. Francis River crayfish. As discussed above under Summary of Biological Status and Threats, the Service has concluded that the Big Creek crayfish and the St. Francis River crayfish are at risk of extinction within the foreseeable future primarily due to the spread of invasive species and degraded water quality. The provisions of this proposed 4(d) rule would promote conservation of the Big Creek crayfish and the St. Francis River crayfish by discouraging the spread of the woodland crayfish (and other invasive species) and encouraging management of the landscape in ways that meet land management considerations while meeting the

conservation needs of the Big Creek crayfish and the St. Francis River crayfish. The provisions of this proposed 4(d) rule are one of many tools that the Service would use to promote the conservation of the Big Creek crayfish and the St. Francis River crayfish. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the Big Creek crayfish and the St. Francis River crayfish as threatened species.

Provisions of the Proposed 4(d) Rule

As outlined in the regulatory text later in this proposed rule this proposed 4(d) (special) rule would provide for the conservation of the Big Creek crayfish and the St. Francis River crayfish by prohibiting the following activities, except as otherwise authorized or permitted: Import or export; take; possession and other acts with unlawfully taken specimens; delivery, receipt, transport, or shipment in interstate or foreign commerce in the course of commercial activity; and sale or offer for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, the spread of nonnative crayfish (Factor E) and declines in water quality (due to mining, sedimentation, etc.) (Factor A) are affecting the status of the Big Creek crayfish and the St. Francis River crayfish. A range of activities have the potential to impact these species, including, but not limited to: Recreational activities that promote the spread of the woodland crayfish; mining (heavy metal and gravel); wastewater effluent discharge; agricultural activities; construction of low-water crossings and bridge construction; and destruction of bank habitat that increases rates of sedimentation. Regulating these activities would help preserve these species, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

In section 3 of the Act, ''take'' is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take would help discourage the spread of the woodland crayfish and would maintain or increase water quality to preserve the Big Creek crayfish and the St. Francis River crayfish, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the Big Creek crayfish and the St. Francis River crayfish that may result in otherwise prohibited take without additional authorization. Additionally, this 4(d) rule also allows a person to take a Big Creek crayfish or a St. Francis River crayfish if that person is conducting research or education under a valid Missouri Department of Conservation Wildlife Collector's permit.

Along with State (and State sponsored) conservation efforts, a person may take, incidental to an otherwise lawful activity, a Big Creek crayfish or a St. Francis River crayfish during restoration activities or other activities that will result in an overall benefit to one or both of the species. Such activities include, but are not limited to, remediation efforts by the Environmental Protection Agency and restoration efforts by the U.S. Forest Service, the Service's Natural Resource Damage Assessment Program or the Service's Partners for Fish and Wildlife Program.

Education and outreach are important conservation tools and it is neither necessary nor advisable for the conservation of the Big Creek crayfish or the St. Francis River crayfish to regulate educational efforts related to these species. Therefore, any person may capture a Big Creek crayfish or a St. Francis River crayfish for educational or observational purposes, provided that the crayfish is not removed from the site of capture.

Missouri's Wildlife Code allows for a combined total of 150 crayfish, freshwater shrimp and non-game fish to be collected daily as bait. Because invasion of the woodland crayfish is the primary threat to Big Creek crayfish and St. Francis River crayfish, the removal of individual native crayfish for use as bait is not expected to impact their overall status. Additionally, the native species are abundant in areas where the woodland crayfish has not yet invaded. Based on these facts, the Service (in coordination with the State of Missouri) has concluded that collection of these two species, as bait, should not be prohibited, so long as persons do not collect more than 25 of each crayfish species per day as outlined in the regulatory text below.

Our full proposed 4(d) rule for the Big Creek crayfish and the St. Francis River crayfish, including all of the prohibitions and exceptions to prohibitions we are proposing for these species, is provided below, under Proposed Regulation Promulgation.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Big Creek crayfish and the St. Francis River crayfish. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Proposed Critical Habitat Designation

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more-complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA Report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented

under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed above, there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA and proposed listing rule for the Big Creek crayfish and the St. Francis River crayfish, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Big Creek Crayfish and the St. Francis River crayfish and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent we have determined that the designation of critical habitat is prudent for both the Big Creek crayfish and the St. Francis River crayfish.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must then find whether critical habitat for both species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of both species and habitat characteristics where the species are located. We find that this information is sufficient for us to conduct both the biological and economic analyses required for the critical habitat determination. Therefore, we conclude that the designation of critical habitat is determinable for the Big Creek crayfish and St. Francis River crayfish.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as:

> The features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential for Big Creek crayfish and St. Francis River crayfish from studies of both species' habitat, ecology, and life history. The primary habitat elements that influence resiliency of both species include water

quality, water quantity, substrate, habitat connectivity, adequate available forage, and ratios or densities of nonnative species low enough to allow for maintaining populations of Big Creek crayfish or St. Francis River crayfish. A full description of the needs of individuals, populations, and the species is available from the SSA report; the individuals' needs are summarized below in Table 6.

TABLE 6—LIFE-HISTORY AND RESOURCE NEEDS OF THE BIG CREEK CRAYFISH AND ST. FRANCIS RIVER CRAYFISH

Type of requirement	Description
Macrohabitats	Pools, runs, and riffles.
Stream Flow Velocity	Big Creek crayfish: low water velocity (0.00–0.35 meters per second (m/s) (0–1.14 feet per second (ft/s)). St. Francis River crayfish: low water velocity (0.00–0.35 m/s (0–1.14 f/s)).
Water Depth	Big Creek crayfish: 0.06–0.49 m (0.20–1.61 ft). St. Francis River crayfish: 0.06–0.52 m (0.20–1.71 ft).
Water Temperature	1.1 °C (34.0 °F) to 28.9 °C (84.0 °F).
Embeddedness	Low, so that spaces under rocks and cavities in gravel remain available.
Refugia	Under rocks or in shallow burrows in gravel.
Diet	Invertebrates, periphyton, plant detritus.

Summary of Essential Physical or Biological Features

In summary, we derive the specific physical or biological features essential to the conservation of Big Creek crayfish and St. Francis River crayfish from studies of these species' habitats, ecology, and life histories as described above. Additional information can be found in the SSA report (Service 2018) available on *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020. We have determined that the following physical or biological features are essential to the conservation of Big Creek crayfish and St. Francis River crayfish:

(1) Stream flow velocity generally between 0 and 1.1 feet per second (ft/s) (0 and 0.35 meters per second (m/s)).

(2) Stream depths generally between 0.2 and 1.6 ft (0.06 and 0.49 m) for the Big Creek crayfish, and stream depths generally between 0.2 and 1.7 ft (0.06 and 0.52 m) for the St. Francis River crayfish.

(3) Water temperatures between 34 and 84 degrees Fahrenheit (°F) (1.1 and 28.9 degrees Celsius (°C)).

(4) Adequately low stream embeddedness so that spaces under rocks and cavities in gravel remain available to the Big Creek crayfish and St. Francis River crayfish.

(5) Spaces under rocks or shallow burrows in gravel that provide refugia.

(6) An available forage and prey base consisting of invertebrates, periphyton, and plant detritus.

(7) Connectivity among occupied stream reaches of the Big Creek crayfish, and connectivity among occupied stream reaches of the St. Francis River crayfish.

(8) Ratios or densities of nonnative species low enough to allow for maintaining the populations of the Big Creek crayfish and St. Francis River crayfish.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Big Creek crayfish and St. Francis River crayfish may require special management considerations or protections to reduce the following threats: (1) Facilitated movement of nonnative crayfish (for example, bait bucket dumping); (2) nutrient pollution that impacts water quantity and quality, including, but not limited to, agricultural runoff and wastewater effluent; (3) significant alteration of water quality (for example, heavy metal contamination); (4) forest management or silviculture activities that do not implement appropriate best management practices (BMPs) such that riparian corridors are impacted or sedimentation is increased; (5) sedimentation from construction of dams, culverts, and low water crossings, and pipeline and utility installation that creates barriers to movement; and (6) other watershed and floodplain disturbances that release sediments or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Education to encourage responsible and legal bait use and proper disposal of unused bait; use of BMPs designed to reduce sedimentation, erosion, and bank side destruction; protection of riparian corridors and retention of sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the systems; remediation of contaminated stream reaches and eroding stream banks; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat.

We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring there are adequate numbers of Big Creek crayfish and St. Francis River crayfish in stable subpopulations and that these subpopulations occur over a wide geographic area. This strategy will help to ensure that extreme events, such as the effects of flooding (for example, flooding that causes excessive sedimentation, nutrients, and debris to disrupt stream ecology), droughts, or chemical spills, cannot simultaneously affect all known subpopulations. The following rangewide potential recovery actions were considered in formulating this proposed critical habitat: (1) Mitigating or minimizing the effects of the spread of woodland crayfish,

preventing additional introductions of woodland crayfish (and other nonnative species), investigating methods to slow or halt the expansion of woodland crayfish, and investigating methods of eradicating woodland crayfish; (2) maintaining the quality and quantity of habitat (including, but not limited to, preventing increased sedimentation rates); (3) preventing additional heavy metal contamination and remediating previous heavy metal contamination; (4) investigating other water quality issues that may impact crayfish abundance; and (5) maintaining existing genetic diversity and striving for representation of all major portions of the species' current ranges by maintaining connectivity.

Sources of data for this proposed critical habitat include the Missouri Department of Conservation, National Hydrography Dataset Plus (for mapping purposes), published literature, and survey reports on water quality in various streams within the species' ranges (for more information, see the SSA report). We have also reviewed available information that pertains to the habitat requirements of this species. Sources of information on habitat requirements include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2018, the SSA report).

Geographical Areas Occupied by the Species at the Time of Listing

As previously stated, for the purposes of critical habitat, the geographical area occupied is an area that may generally be de-lineated around species' occurrences, as determined by the Secretary. Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (for example, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (50 CFR 424.02).

We consider the areas occupied at the time of listing to include all streams within occupied subwatersheds (at the 12-digit hydrologic unit level). Occupied watersheds were determined using data from the Missouri Department of Conservation. For the purposes of designating critical habitat, we also consider stretches of the St. Francis River between subwatersheds as occupied migratory corridors, based on genetic analyses that indicate there is gene flow among subwatersheds.

Based on this information, we consider all streams within the following subwatersheds in the Upper St. Francis River watershed to be currently occupied by the Big Creek crayfish at the time of this proposed listing (numbers in parentheses represent the 12-digit hydrologic codes): Big Lake Creek-St. Francis River (080202020503), Blankshire Branch-St. Francis River (080202020204), Captain Creek-St. Francis River (080202020405), Cedar Bottom Creek-St. Francis River (080202020402), Clark Creek (080202020407), Cedar Bottom Creek (080202020501), Crane Pond Creek (080202020303), Headwaters St. Francis River (080202020201), Headwaters Twelvemile Creek (080202020403), Leatherwood Creek-St. Francis River (080202020406), Lower Big Creek (080202020304), Middle Big Creek (080202020302), Saline Creek-Little St. Francis River (080202020102), Turkey Creek-St. Francis River (080202020210), Twelvemile Creek (080202020404), and Upper Big Creek (080202020301). We also consider the entire St. Francis River upstream of 37.091254N, 90.447212W to be occupied because genetic analyses indicate gene flow among the subwatersheds.

For the St. Francis River crayfish, we consider all streams within the following subwatersheds to be currently occupied at the time of listing: Blankshire Branch-St. Francis River (80202020204), Captain Creek-St. Francis River (80202020405), Cedar Bottom Creek-St. Francis River (80202020402), Headwaters St. Francis River (80202020201), Headwaters Stouts Creek (80202020207), Hubble Creek-St. Francis River (80202020502), Leatherwood Creek-St. Francis River (80202020406), Little St. Francis River (80202020103), Lost Creek (80202020507), Marble Creek (80202020401), Musco Creek-Little St. Francis River (80202020101), O'Bannon Creek-St. Francis River (80202020206), Saline Creek-Little St. Francis River (80202020102), Stouts Creek (80202020208), Turkey Creek-St. Francis River (80202020210), and Wachita Creek-St. Francis River (80202020209). We also consider the entire St. Francis River upstream of 36.982104N, 90.335400W to be currently occupied, given that genetic analyses indicate gene flow among subwatersheds. The proposed critical habitat designation for each species includes all known currently occupied streams within the historical range, as well as those that connect occupied streams, that contain the physical or biological features that will allow for the maintenance and expansion of existing populations. See Proposed Critical Habitat Designations, below, for a more detailed explanation of the units.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are not proposing to designate any areas outside the geographical area currently occupied by the Big Creek crayfish or the St. Francis River crayfish because we did not find any unoccupied areas that were essential for the conservation of the species. The protection of the currently occupied subpopulations across the range would reduce the risk of extinction, by improving the resiliency of subpopulations in these currently occupied streams.

General Information on the Maps of the Proposed Critical Habitat Designation

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designation in the discussion of individual units below. Further specific locality information can be found using the online critical habitat mapper tool available on the Environmental Conservation Online System (ECOS) at: *https://ecos.fws.gov/ecp/report/table/critical-habitat.html* and then clicking on the ''online mapper'' link. The online mapper can be used to find where areas of critical habitat overlap with specific addresses, places, or both. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

When determining proposed critical habitat boundaries, we make every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack physical or biological features necessary for the Big Creek crayfish and the St. Francis River crayfish. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation

under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing to designate approximately 1,069 rmi (1,720 km) in one unit in the Upper St. Francis River watershed in Missouri as critical habitat for the Big Creek crayfish, and 1,043 rmi (1,679 km) in one unit in the Upper St. Francis River watershed in Missouri as critical habitat for the St. Francis River crayfish. Both units are currently occupied by the species, and there is some overlap between critical habitat units. Although these unit sizes are slightly larger than the ranges stated in Tables 1 and 2, we consider this slightly larger area occupied for the purposes of critical habitat because of the need to maintain connectivity between occurrences as identified in physical or biological feature 7. These areas are intermittently occupied by the crayfish to connect occupied streams within the range of the Big Creek crayfish and St. Francis River crayfish, but are not occupied consistently. Adding these areas to the designations is consistent with our definitions of physical or biological features outlined in the regulations at 50 CFR 424.02. Both units contain some or all of the physical and biological features essential to the conservation of the species. Both units may require special management considerations or protection to address the introduction and spread of nonnative species and habitat degradation and its associated watershed-level effects on water quality, water quantity, habitat connectivity, and instream habitat suitability. Tables 7 and 8, below, show land ownership of the riparian areas surrounding the units and approximate river miles of the proposed designated units for the Big Creek crayfish and the St. Francis River crayfish. Because all streambeds are navigable waters, both proposed critical habitat units are managed by the State of Missouri. We are not currently proposing to designate any areas outside the geographical area occupied by the species because the occupied areas are adequate and encompass the historical range of both species.

TABLE 7—OWNERSHIP OF ADJACENT LAND WITHIN THE BIG CREEK CRAYFISH PROPOSED CRITICAL HABITAT UNIT

Ownership	Stream miles (kilometers)
Federal	296 (476)
State	42 (68)
Private	730 (1,175)
Total	1,069 (1,720)

NOTE: Stream miles may not sum due to rounding.

Big Creek Crayfish Unit

The Big Creek crayfish unit consists of approximately 1,069 rmi (1,720 km) in the Upper St. Francis River watershed upstream of Wappapello Dam in Iron, Madison, St. Francois, Washington, and Wayne Counties in Missouri. The unit consists of all of the streams in the following 12-digit hydrologic units: Big Lake Creek-St. Francis River (080202020503), Blankshire Branch-St. Francis River (080202020204), Captain Creek-St. Francis River (080202020405), Cedar Bottom Creek-St. Francis River (080202020402), Clark Creek (080202020407), Cedar Bottom Creek (080202020501), Crane Pond Creek (080202020303), Headwaters St. Francis River (080202020201), Headwaters Twelvemile Creek (080202020403), Leatherwood Creek-St. Francis River (080202020406), Lower Big Creek (080202020304), Middle Big Creek (080202020302), Saline Creek-Little St. Francis River (080202020102), Turkey Creek-St. Francis River (080202020210), Twelvemile Creek (080202020404), and Upper Big Creek (080202020301). The unit also consists of the entire St. Francis River upstream of 37.091254N, 90.447212W. The unit does not include any areas of adjacent land. A large portion of the riparian land adjacent to streams in this unit is privately owned (68 percent), with 28 percent in Federal ownership and 4 percent in State ownership.

TABLE 8—OWNERSHIP OF ADJACENT LAND WITHIN THE ST. FRANCIS RIVER CRAYFISH PROPOSED CRITICAL HABITAT UNIT

Ownership	Stream miles (kilometers)
Federal	329 (529)
State	22 (35)
Private	693 (1,115)
Total	1,043 (1,679)

NOTE: Stream miles may not sum due to rounding.

St. Francis River Crayfish Unit

The St. Francis River crayfish unit consists of approximately 1,043 rmi (1,679 km) in the Upper St. Francis River watershed upstream of Wappapello Dam in Iron, Madison, St. Francois, Washington, and Wayne Counties in Missouri. The unit consists of all of the streams in the following 12-digit hydrologic units: Blankshire Branch-St. Francis River (80202020204), Captain Creek-St. Francis River (80202020405), Cedar Bottom Creek-St. Francis River (80202020402), Headwaters St. Francis River (80202020201), Headwaters Stouts Creek (80202020207), Hubble Creek-St. Francis River (80202020502), Leatherwood Creek-St. Francis River (80202020406), Little St. Francis River (80202020103), Lost Creek (80202020507), Marble Creek (80202020401), Musco Creek-Little St. Francis River (80202020101), O'Bannon Creek-St. Francis River (80202020206), Saline Creek-Little St. Francis River (80202020102), Stouts Creek (80202020208), Turkey Creek-St. Francis River (80202020210), and Wachita Creek-St. Francis River (80202020209). The unit also consists of the entire St. Francis River upstream of 36.982104N, 90.335400W. The unit does not include any areas of adjacent land. A large portion of the riparian land adjacent to streams in this unit is privately owned (66 percent), with 32 percent in Federal ownership and 2 percent in State ownership.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 45020). Destruction or adverse modification means a direct or indirect alteration that appreciably

diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation. Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Replacement or maintenance of river crossings and bridges;

(2) Construction, replacement, removal, or abandonment of pipelines and electrical transmission lines;

(3) Watershed restoration activities and stream restoration activities, including, but not limited to, stream liming, habitat improvements, natural channel design, and bank restoration;

(4) Stocking of nonnative fish or of competitive, native sport fish;

(5) Pesticide use;

(6) Emergency response activities; and

(7) Oil and gas exploration and extraction.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands within the proposed critical habitat designations.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate whether a specific critical habitat designation may restrict or modify specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for these particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socioeconomic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (for example, under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For these proposed designations, we developed an incremental effects memorandum (IEM) for each species considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. The information contained in our IEMs was then used to develop a screening analysis of the probable effects of the designation of critical habitat for both species (IEc 2019, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis, combined with the information contained in our IEM, constitutes our draft economic analysis (DEA) of the proposed critical habitat designations for the Big Creek crayfish and St. Francis River crayfish and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the proposed critical habitat designations. In our February 22, 2019, IEM, we first identified probable incremental economic impacts associated with each of the following categories of activities: (1) Federal lands management (U.S. Forest Service); (2) pesticide use; (3) forest management/silviculture/timber; (4) development; (5) recreation (fish stocking and baitfish harvesting); (6) restoration activities (instream and watershed); (7) emergency response; and (8) water crossings (transportation, utility, oil and gas). Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the ESA designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Big Creek crayfish or the St. Francis River crayfish is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (that is, difference between the jeopardy and adverse modification standards) for the Big Creek crayfish and St. Francis River crayfish. Because the designations of critical habitat are being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to either species would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for the species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of these proposed designations of critical habitat.

The proposed critical habitat designations for the Big Creek crayfish and St. Francis River crayfish fall completely within areas that are currently occupied by the species. In these areas, any actions that may affect the species or its habitat would likely also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid

jeopardizing the continued existence of the species. Therefore, the only additional costs that are expected in all of the proposed critical habitat designations are administrative costs, due to the fact that this additional analysis will require time and resources by both the Federal action agency and the Service.

Our analysis concluded that, in most circumstances, these costs would not reach the threshold of ''significant'' under E.O. 12866. For the critical habitat designations for both species, we anticipate a maximum of 115 section 7 consultations annually at a total incremental cost of approximately $135,000 per year.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

During the development of a final designation, we will consider any additional economic impact information received through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. As discussed above, we prepared an analysis of the probable economic impacts of the proposed critical habitat designations and related factors. Based on the draft analysis, the Secretary does not propose to exercise his discretion to exclude any areas from the final designations based on economic impacts. However, during the development of the final designations, we will consider any additional economic impact information we receive during the public comment period, which may result in areas being excluded from the final critical habitat designations under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense or Department of Homeland Security where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designations of critical habitat for both species are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designations based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans (HCPs), safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Big Creek crayfish or St. Francis River crayfish, and the proposed designations do not include any Tribal lands or trust resources. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designations based on other relevant impacts.

IV. Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will

not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designations. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if adopted, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if adopted, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13771

We do not believe this proposed rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designations of proposed critical habitat for the Big Creek crayfish and St. Francis River crayfish will significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the lands being proposed for critical habitat

designation are primarily Federally or privately owned, and are managed by the State of Missouri. These government entities do not fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Big Creek crayfish and St. Francis River crayfish in takings implications assessments. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for both species and concludes that, if adopted, the designations of critical habitat for Big Creek crayfish and St. Francis River crayfish do not pose significant takings implications for lands within or affected by the designations.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of these proposed critical habitat designations with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designations may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA), need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. This determination is discussed in the October 1983 **Federal Register** document just mentioned. This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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. As we have already discussed, there are no tribal lands in the proposed critical habitat designations, and we expect no effect on Tribes as a result of the proposed listings.

References Cited

A complete list of references cited in the SSA report and this proposed rule is available on the internet at

http://www.regulations.gov and upon request from the Columbia, Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Columbia, Missouri Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by adding entries for ''Crayfish, Big Creek'' and ''Crayfish, St. Francis River'' in alphabetical order under CRUSTACEANS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CRUSTACEANS:				
*	*	*	*	*
Crayfish, Big Creek	*Faxonius peruncus*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.46(b);[4d] 50 CFR 17.95(h).[CH]
*	*	*	*	*
Crayfish, St. Francis River.	*Faxonius quadruncus*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.46(b);[4d] 50 CFR 17.95(h).[CH]
*	*	*	*	*

■ 3. Amend § 17.46 by adding paragraph (b) to read as set forth below:

§ 17.46 Special rules—crustaceans.

* * * * *

(b) Big Creek crayfish (*Faxonius peruncus*) and St. Francis River crayfish (*Faxonius quadruncus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Big Creek crayfish and the St. Francis River crayfish. Except as provided under paragraph (b)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) The following activities that result in mortality of the species:

(A) Activities that impact crayfish habitat, riparian areas adjacent to crayfish sites, and habitat between connecting sites such that the species' reproduction or survival will be impacted or the effects of woodland crayfish invasion will be exacerbated. Such activities include, but are not limited to:

(*1*) Construction of instream low-water crossings;

(*2*) Destruction of riparian habitat that results in excessive sedimentation;

(*3*) Bridge construction; and

(*4*) Gravel mining.

(B) Activities that lead to the introduction of heavy metals into streams. Such activities include, but are not limited to, heavy metal mining.

(C) Activities that appreciably negatively affect water quality, chemistry, or quantity such that the species' reproduction or survival will be impacted. Such activities may include, but are not limited to, the release of wastewater effluent and agricultural runoff.

(D) Activities that impact hydrological flows such that the species' reproduction or survival will be impacted. Such activities include, but are not limited to, construction of dams and modification of stream channels.

(E) Activities that facilitate the spread of woodland crayfish or introduce additional woodland crayfish in occupied Big Creek crayfish or St. Francis River crayfish stream reaches. Such activities may include, but are not limited to, bait bucket dumping.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Restoration activities or other activities that will result in an overall benefit to one or both of the species. Such activities include, but are not limited to, remediation efforts by the Environmental Protection Agency and restoration efforts by the U.S. Forest Service, the Service's Natural Resource Damage Assessment Program or the Service's Partners for Fish and Wildlife Program.

(B) A person conducting research or education under a valid Missouri Department of Conservation Wildlife Collector's permit.

(C) A person capturing crayfish for educational or observational purposes provided that the crayfish is not removed from the site of capture.

(D) A person capturing and possessing up to 25 of each crayfish species for use as bait with a valid Missouri fishing

license provided that the crayfish are used as bait only in the river in which they were collected and provided that any unused bait crayfish are released back into the river from which they were captured or are disposed of in a trash can.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 3. Amend § 17.95, paragraph (h), by:

■ a. Adding an entry for ''Big Creek Crayfish (*Faxonius peruncus*)'' in the same alphabetical order as the species appears in the table in § 17.11(h); and

■ b. Adding an entry for ''St. Francis River Crayfish (*Faxonius quadruncus*)'' in the same alphabetical order as the species appears in the table in § 17.11(h).

The additions read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Big Creek Crayfish (*Faxonius peruncus*)

(1) The critical habitat unit is depicted for Iron, Madison, St. Francois, Washington, and Wayne Counties in Missouri, on the map in this entry.

(2) Within the critical habitat unit, the physical or biological features essential to the conservation of the Big Creek Crayfish consist of the following components:

(i) Stream flow velocity generally between 0 and 1.1 feet per second (ft/s) (0 and 0.35 meters per second (m/s)).

(ii) Stream depths generally between 0.2 and 1.6 feet (0.06 and 0.49 meters).

(iii) Water temperatures between 34 and 84 °F (1.1 and 28.9 °C).

(iv) Adequately low stream embeddedness so that spaces under rocks and cavities in gravel remain available to the Big Creek crayfish.

(v) Spaces under rocks or shallow burrows in gravel that provide refugia.

(vi) An available forage and prey base consisting of invertebrates, periphyton, and plant detritus.

(vii) Connectivity among occupied stream reaches of the Big Creek crayfish.

(viii) Adequately low ratios or densities of nonnative species that allow for maintaining populations of the Big Creek crayfish.

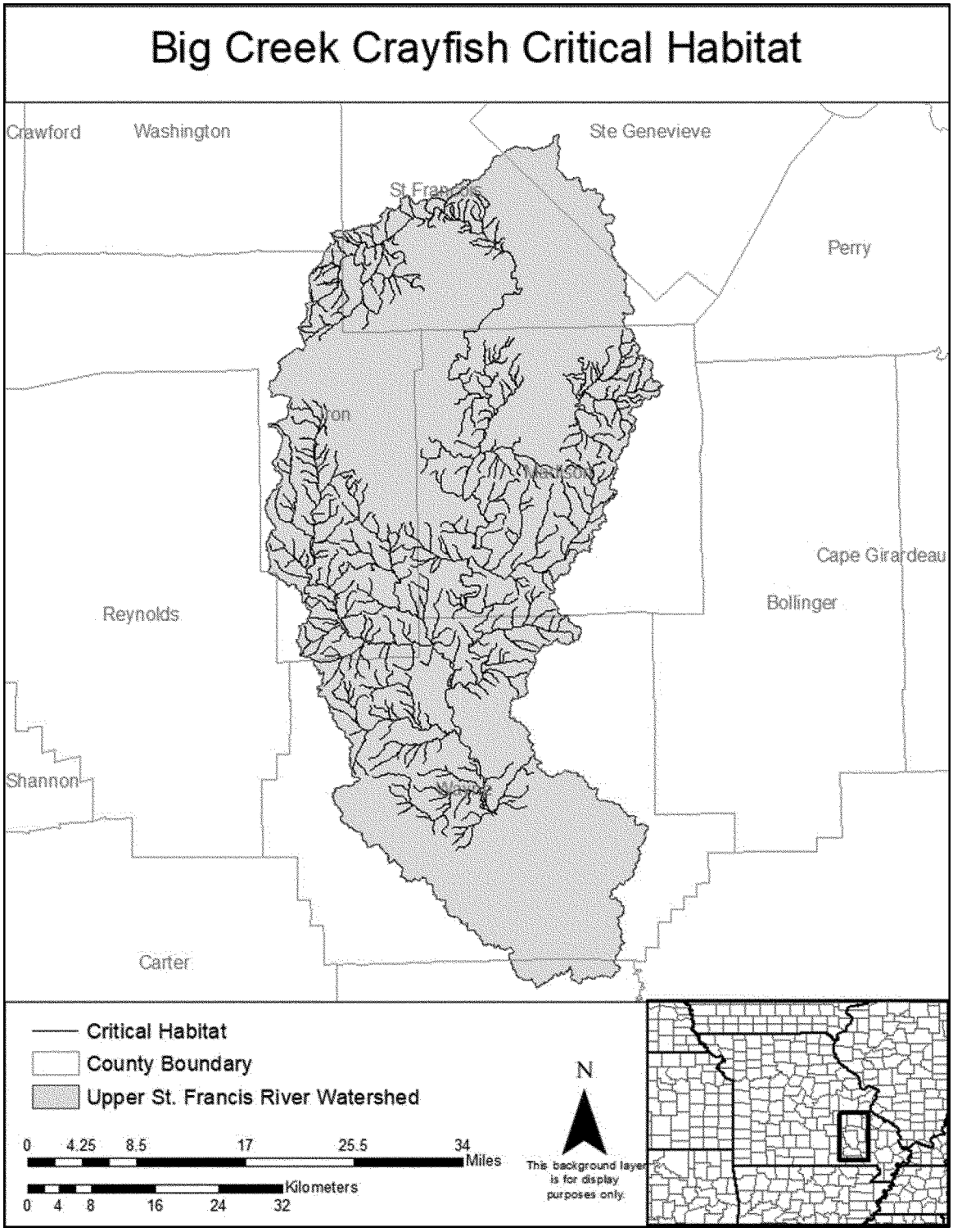
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) *Critical habitat map unit.* The National Hydrography Dataset Plus (NHD*Plus*) was the geospatial data used to delineate critical habitat. NHD*Plus* is a national geospatial surface water framework that integrates the National Hydrography Dataset with the National Elevation Dataset and the Watershed Boundary Dataset. NHD*Plus* uses medium resolution (1:100,000-scale) data with a geographic projection and NAD83 datum. Critical habitat was delineated by including all streams within subwatersheds (at the 12-digit hydrologic unit level) occupied by the Big Creek crayfish. Occupied watersheds were defined using data from the Missouri Department of Conservation; the entire St. Francis River upstream of 37.091254N, 90.447212W is also considered occupied as a migratory route. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020 and at the Columbia, Missouri Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Upper St. Francis River Watershed Unit—Iron, Madison, St. Francois, Washington, and Wayne Counties, Missouri.

(i) The unit consists of all of the streams (approximately 1,069 river miles (1,720 kilometers)) upstream of Wappapello Dam in the following subwatersheds (numbers in parentheses represent the 12-digit hydrologic codes): Big Lake Creek-St. Francis River (080202020503), Blankshire Branch-St. Francis River (080202020204), Captain Creek-St. Francis River (080202020405), Cedar Bottom Creek-St. Francis River (080202020402), Clark Creek (080202020407), Cedar Bottom Creek (080202020501), Crane Pond Creek (080202020303), Headwaters St. Francis River (080202020201), Headwaters Twelvemile Creek (080202020403), Leatherwood Creek-St. Francis River (080202020406), Lower Big Creek (080202020304), Middle Big Creek (080202020302), Saline Creek-Little St. Francis River (080202020102), Turkey Creek-St. Francis River (080202020210), Twelvemile Creek (080202020404), and Upper Big Creek (080202020301). The unit also consists of the entire St. Francis River upstream of 37.091254N, 90.447212W. The unit does not include any areas of adjacent land. This unit includes stream habitat up to bank full height.

(ii) Map of Upper St. Francis River Watershed Unit of Big Creek crayfish critical habitat follows:



St. Francis River Crayfish (*Faxonius quadruncus*)

(1) The critical habitat unit is depicted for Iron, Madison, St. Francois, Washington, and Wayne Counties in Missouri, on the map in this entry.

(2) Within the critical habitat unit, the physical or biological features essential to the conservation of the St. Francis River crayfish consist of the following components:

(i) Stream flow velocity generally between 0 and 1.1 feet per second (ft/s) (0 and 0.35 meters per second (m/s)).

(ii) Stream depths generally between 0.2 and 1.7 feet (0.06 and 0.52 meters).

(iii) Water temperatures between 34 and 84 °F (1.1 and 28.9 °C).

(vi) Adequately low stream embeddedness so that spaces under rocks and cavities in gravel remain available to the St. Francis River crayfish.

(v) Spaces under rocks or shallow burrows in gravel that provide refugia.

(vi) An available forage and prey base consisting of invertebrates, periphyton, and plant detritus.

(vii) Connectivity among occupied stream reaches of the St. Francis River crayfish.

(viii) Adequately low ratios or densities of nonnative species that allow for maintaining populations of the St. Francis River crayfish.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

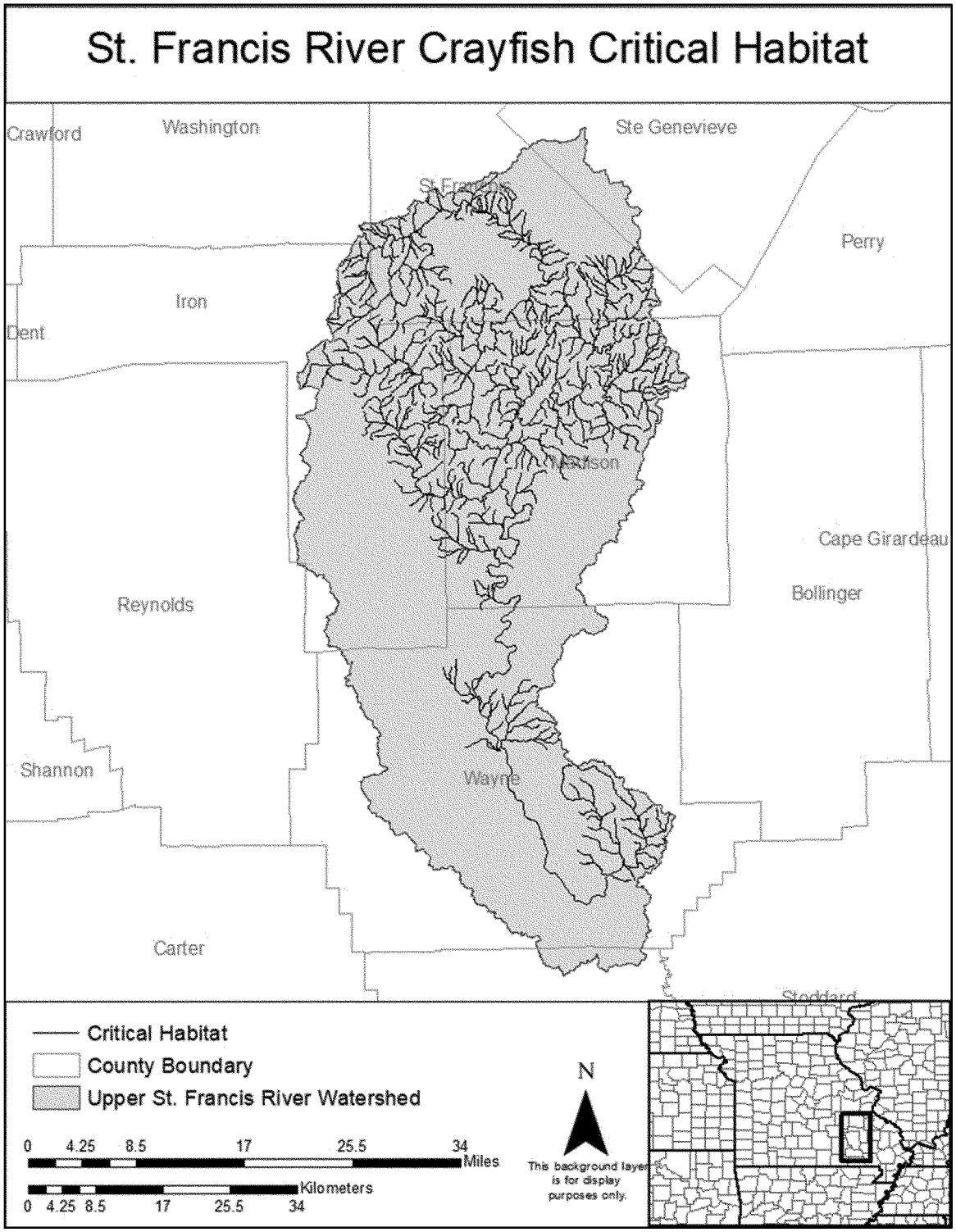
(4) *Critical habitat map unit.* The National Hydrography Dataset Plus (NHD*Plus*) was the geospatial data used to delineate critical habitat. NHD*Plus* is a national geospatial surface water framework that integrates the National Hydrography Dataset with the National Elevation Dataset and the Watershed Boundary Dataset. NHD*Plus* uses medium resolution (1:100,000-scale) data with a geographic projection and NAD83 Datum. Critical habitat was delineated by including all streams within subwatersheds (at the 12-digit hydrologic unit level) occupied by the St. Francis River crayfish. Occupied watersheds were defined using data from the Missouri Department of Conservation; the entire St. Francis River upstream of 36.982104N, 90.335400W is also considered occupied as a migratory route. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2019–0020 and at the Columbia, Missouri Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Upper St. Francis River Watershed Unit—Iron, Madison, St. Francois, Washington, and Wayne Counties, Missouri.

(i) The unit consists of all of the streams (approximately 1,043 river miles (1,679 kilometers)) upstream of Wappapello Dam in the following subwatersheds (numbers in parentheses represent the 12-digit hydrologic codes): Blankshire Branch-St. Francis River (80202020204), Captain Creek-St. Francis River (80202020405), Cedar Bottom Creek-St. Francis River (80202020402), Headwaters St. Francis River (80202020201), Headwaters Stouts Creek (80202020207), Hubble Creek-St. Francis River (80202020502), Leatherwood Creek-St. Francis River (80202020406), Little St. Francis River (80202020103), Lost Creek (80202020507), Marble Creek (80202020401), Musco Creek-Little St. Francis River (80202020101), O'Bannon Creek-St. Francis River (80202020206), Saline Creek-Little St. Francis River (80202020102), Stouts Creek (80202020208), Turkey Creek-St. Francis River (80202020210), and Wachita Creek-St. Francis River (80202020209). The unit also consists of the entire St. Francis River upstream of 36.982104N, 90.335400W. The unit does not include any areas of adjacent land. The Upper St. Francis River Watershed Unit includes stream habitat up to bank full height.

(ii) Map of Upper St. Francis River Watershed Unit of St. Francis River crayfish critical habitat follows:

critical habitat follows:[PHOTO]



* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19298 Filed 9–16–20; 8:45 am]

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Chapin Mesa Milkvetch and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2018–0055; FF09E21000 FXES11110900000 201]

RIN 1018–BD17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Chapin Mesa Milkvetch and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Astragalus schmolliae* (hereafter referred to by the common name Chapin Mesa milkvetch), a plant species from southwestern Colorado, as a threatened species under the Endangered Species Act of 1973 (Act), as amended, and to designate critical habitat. If we make this rule final as proposed, the effect of this rule will be to add this species to the List of Endangered and Threatened Plants and to designate critical habitat for the species. In total, we propose to designate approximately 3,635 acres (1,471 hectares) in Montezuma County in southwestern Colorado as critical habitat for the species. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for Chapin Mesa milkvetch.

DATES: We will accept comments received or postmarked on or before November 16, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 2, 2020.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R6–ES–2018–0055, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R6–ES–2018–0055, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

Document availability: The draft economic analysis is available at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2018–0055, and at the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2018–0055, and at the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Timberman, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 445 W. Gunnison Ave., Suite 240, Grand Junction, CO 81501–5711; telephone 970–628–7181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to 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**. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

This rule proposes to list the Chapin Mesa milkvetch as a threatened species and proposes critical habitat necessary for the conservation of the species. Chapin Mesa milkvetch is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing proposal had been precluded by other higher priority listing activities. This proposed rule and the associated species status assessment report (SSA report) reassess all available information regarding status of and threats to the Chapin Mesa milkvetch.

The basis for our action. Under the Act, we can 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 have determined that the primary drivers of the Chapin Mesa milkvetch's current and future condition are the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass (*Bromus tectorum*); and the interaction between these elements (Factor A).

Any species that is determined to be an endangered or a threatened species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

Supporting analyses. We prepared an analysis of the economic impacts of the proposed critical habitat designation and hereby announce the availability of the draft economic analysis for public review and comment.

We conducted a species status assessment (SSA) for the Chapin Mesa milkvetch, with input and information provided by Mesa Verde National Park, the Colorado Natural Heritage Program, and the Ute Mountain Ute Tribe. The results of this assessment are summarized in an SSA report, which represents a compilation of the best scientific and commercial data available concerning the status of the species,

including the past, present, and future stressors to this species (Service 2018, entire). Additionally, the SSA report contains our analysis of required habitat and the existing conditions of that habitat.

Peer review. We sought comments from independent specialists on our SSA report for the Chapin Mesa milkvetch to ensure that we base our listing determination and critical habitat proposal on scientifically sound data, assumptions, and analyses. We received feedback from five experts that have knowledge and/or experience with the species or similar species biology as peer review of the SSA report. The reviewers were generally supportive of our approach and made suggestions and comments that strengthened our analysis. We incorporated these comments into the SSA report, which can be found at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2018–0055.

Information Requested

Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. We particularly seek comments concerning:

(1) Chapin Mesa milkvetch's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for nutrition, reproduction, and dispersal;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(6) Specific information on:

(a) The amount and distribution of Chapin Mesa milkvetch habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and,

(ii) Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the Chapin Mesa milkvetch and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area as critical habitat that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. We are particularly interested in information on proposed Unit 4, located on Ute Mountain Ute Tribal land; this unit is managed as a Tribal Park, which limits human disturbance (Scott Clow (Ute Mountain Ute Tribe) 2017, pers. comm.). In addition, the Tribe has recently developed a conservation plan for Chapin Mesa milkvetch, which we will consider as appropriate in our determination on whether to exclude Unit 4 from the final critical habitat designation.

(12) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(14) Whether the measures outlined in the proposed 4(d) rule are necessary and advisable to provide for the conservation of Chapin Mesa milkvetch.

(15) Whether it would be necessary and advisable to incorporate any additional prohibitions from section 9(a)(2) of the Act into the 4(d) rule for Chapin Mesa milkvetch, such as the prohibitions related to import to and export from the United States, or prohibitions related to interstate or foreign commerce.

(16) How Mesa Verde National Park's September 2018 conservation plan for Chapin Mesa milkvetch may impact the species, and whether the plan is

sufficiently certain to be implemented and certain to be effective.

(17) How the Ute Mountain Ute Tribe's January 2020 conservation plan for Chapin Mesa milkvetch may impact the species, and whether the plan is sufficiently certain to be implemented and certain to be effective.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES** above). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we sought the expert opinions of five appropriate and independent specialists regarding the SSA report upon which this proposed rule is based. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in Chapin Mesa milkvetch or similar species biology, habitat, and ecology. Peer-review comments will be available along with other public comments in the docket for this proposed rule (at *http://www.regulations.gov,* Docket No. FWS–R6–ES–2018–0055).

Previous Federal Actions

Federal action for the Chapin Mesa milkvetch (then known by the common name Schmoll's milkvetch) began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, presented to Congress on January 9, 1975, identified the Chapin Mesa milkvetch as endangered (House Document 94–51, pp. 57–58). On July 1, 1975, the Service published in the **Federal Register** (40 FR 27824) our acceptance of the Smithsonian report as a petition within the context of the Act, giving notice of our intention to review the status of the plant taxa therein.

On June 16, 1976, the Service proposed to list approximately 1,700 vascular plant taxa, including the Chapin Mesa milkvetch, as Endangered pursuant to section 4 of the Act (41 FR 24524). In 1978, amendments to the Act required that all proposals more than 2 years old be withdrawn, providing a 1-year grace period to proposals already more than 2 years old. On December 10, 1979, the Service withdrew the portion of the June 16, 1976, proposed rule that had not been made final, which removed the Chapin Mesa milkvetch from proposed status but retained the species as a candidate plant taxon that may qualify for listing under the Act (44 FR 70796).

On December 15, 1980, the Service identified Chapin Mesa milkvetch as a category 2 candidate ''currently under review'' (45 FR 82480). On November 28, 1983, the Chapin Mesa milkvetch was moved to the ''taxa no longer under review'' list, and given a 3C rank indicating the species was proven to be more abundant or widespread than previously believed or not subjected to an identifiable threat (48 FR 53640). Subsequently, despite the conclusions of the 1983 review, the species was still included as a category 2 species on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). The category 2 species designation was defined as taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat were not currently available to support proposed rules.

In the Candidate Notice of Review (CNOR) published on February 28, 1996 (61 FR 7596), we announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants. The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species and to clarify that the Service no longer regarded these species as candidates for listing. Since the Chapin Mesa milkvetch was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR.

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service list as either endangered or threatened 206 species, including the Chapin Mesa milkvetch, that occurred in our Mountain Prairie Region (Forest Guardians 2007, pp. 1–37).

On March 19, 2008, WildEarth Guardians filed a complaint (1:08–CV–472–CKK) indicating that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on their two multiple species petitions—one for the Mountain-Prairie Region, and one for the Southwest Region (*WildEarth Guardians* v. *Kempthorne* 2008, case 1:08–CV–472–CKK). On March 13, 2009, the Service

and WildEarth Guardians filed a stipulated settlement in the District of Columbia Court, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presents substantial information indicating that the petitioned action may be warranted for 38 Mountain-Prairie Region species, including Chapin Mesa milkvetch by August 9, 2009 (*WildEarth Guardians* vs. *Salazar* 2009, case 1:08–CV–472–CKK).

On August 18, 2009, we published our finding that the petition presented substantial information to indicate that listing the Chapin Mesa milkvetch (then known as Schmoll's milkvetch) may be warranted based on threats from fire, nonnative species invasions, road construction, grazing, and drought (74 FR 41649).

On December 15, 2010, we published a 12-month finding for both the Chapin Mesa milkvetch (then known as Schmoll's milkvetch) and the Skiff milkvetch (*Astragalus microcymbus*), announcing our finding that listing of both species was warranted, but precluded by higher priority actions (75 FR 78514). As a result of this finding, the Chapin Mesa milkvetch was added to the list of candidate species and assigned a listing priority number of 8, indicating that the species faced threats of moderate magnitude that were considered imminent, including nonnative cheatgrass invasion, wildfires, management of fire and fuels, and drought. Since that time, we have reassessed the status of the species annually through the CNOR process. In 2015, the common name ''Chapin Mesa milkvetch'' replaced the common name ''Schmoll's milkvetch'' for the species, and in the 2015 CNOR (80 FR 80584; December 24, 2015), we accepted Chapin Mesa milkvetch as the new common name for the species; we have used that common name in all subsequent reviews pertaining to the species.

Background

A thorough review of the taxonomy, range and distribution, life history, and ecology of the Chapin Mesa milkvetch is presented in the SSA report (Service 2018, pp. 3–14; available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2018–0055), and is briefly summarized here. Chapin Mesa milkvetch is a narrow endemic, upright, perennial herb primarily found on the tops of mesas in Southwestern Colorado in Montezuma County on land administered by Mesa Verde National Park and Ute Mountain Ute Tribal Park. Chapin Mesa milkvetch is a member of the family Fabaceae (legume family) and was known by the common name Schmoll's milkvetch prior to 2015. The stems of Chapin Mesa milkvetch are purplish below, green above, tall (45 to 60 centimeters (cm)), branching from the base, with short, stiff, appressed hairs (lying closely and flatly against the plant's surface) on the foliage. Leaves are pinnate with 11 to 13 linear leaflets, 1 to 2 millimeters (mm) wide, and 1 to 3 cm long. Flowers are yellowish-white or cream colored, and 12 to 13 cm long with bracts that extend under the flower that have black hairs. The distinguishing characteristic of the species is the leathery pod (Service 2018, pp. 3–4).

Chapin Mesa milkvetch's global distribution is constrained almost entirely to Chapin Mesa within Mesa Verde National Park and the Ute Mountain Ute Tribal Park in southern Colorado, with some outlying areas on neighboring Park Mesa and West Chapin Spur (Rondeau 2017, p. 1). Chapin Mesa milkvetch habitat occupies approximately 2,000 acres (ac) (809 hectares (ha)) in Mesa Verde National Park (CNHP 2010, pp. 12–19; Anderson 2004, pp. 25, 30). While the species has been observed on the Ute Mountain Tribal Park, it is unclear at this time how much occupied habitat occurs there, because surveys have not been done in recent years. The habitat for Chapin Mesa milkvetch is dense pinyon-juniper woodland of mesa tops, with deep, reddish, loess soil (Service 2018, p. 8). Pinyon-juniper trees are easily killed by fires and are slow to regenerate (Romme *et al.* 2003, p. 344.). The historical fire regime of the pinyon-juniper woodlands on the mesa tops of the Mesa Verde area is characterized by lightning-caused, infrequent (~400-year rotation), stand-replacing fires, as opposed to low-severity, stand-thinning fires (Romme *et al.* 2003, p. 338; Floyd *et al.* 2004, p. 286).

This species is believed to consist of one large, interconnected population. Like many rare plants, Chapin Mesa milkvetch is globally rare, but is locally abundant throughout its occupied habitat (Rondeau 2017, p. 1). We do not have precise or recent data pertaining to total population size for the species, even within Mesa Verde National Park (Service 2018, p. 4–5). Although regular monitoring has occurred in Mesa Verde National Park since 2001 in established monitoring plots, the demography plots do not represent a random sample, and cannot be used to estimate population size or overall population density (Service 2018, p. 4).

Chapin Mesa milkvetch plants emerge in early spring and usually begin flowering in late April or early May. Flowering continues into early or mid-June; fruit set begins in late May and occurs through June; and by late June, most fruits, while still attached to the plant, have opened and released their seeds (Service 2018, p. 7). During very dry years, like many other *Astragalus* species, the plants can remain dormant with no above-ground growth (Colyer 2003 in Anderson 2004, p. 11). Chapin Mesa milkvetch requires pollination by insects to set fruit; the flowers require a strong insect for pollination because the insect must force itself between the petals of the papilionaceous (butterfly shaped) flowers (Green 2012, p. 2).

Spring and winter (snow) precipitation that is greater than 25 percent below the 30-year average (1971–2000) (*i.e.,* greater than 3.24 inches and 3.46 inches, respectively) provides appropriate soil moisture for the Chapin Mesa milkvetch. The emergence and density of Chapin Mesa milkvetch are strongly tied to winter precipitation. Years with ''wet'' winters (precipitation falling primarily as snow) precede high density counts, and years with dry winters translate to low or no emergence (Rondeau 2017, p. 3). Climate requirements for seedling emergence and survival are not well known; however, we infer that spring moisture is also critical, as seedling survival relies on growing deep roots quickly (Rondeau 2017, p. 9). It is likely that winter moisture coupled with winter temperature is also important for seedlings due to available soil moisture for seedling survival (Rondeau 2017, p. 16).

Regulatory and Analytical Framework

Regulatory Framework

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, 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.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R6–ES–2018–0055 on *http://www.regulations.gov*.

To assess Chapin Mesa milkvetch viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability, including the uncertainties associated with these.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and its influences, to assess the species' overall viability and the risks to that viability.

To evaluate the biological status of the Chapin Mesa milkvetch both currently and into the future, we assessed a range of conditions to consider the species' resiliency, redundancy, and representation (together, the 3Rs). Since Chapin Mesa milkvetch is considered to consist of one large population, for the purposes of our analysis, we divided the range of Chapin Mesa milkvetch into four representative units, which are further broken down into subunits. The Chapin Mesa milkvetch needs multiple, resilient subunits distributed across its range to maintain its persistence into the future and to avoid extinction (Service 2018, pp. 8–14). A number of factors influence whether Chapin Mesa milkvetch subunits are considered to be resilient to stochastic events. These factors include: (1) Sufficient population size (density); (2) recruitment of Chapin Mesa milkvetch into the population, as evidenced by the presence of all life stages at some point during the growing season; and (3) connectivity between populations (Service 2018, pp. 12–13).

We evaluated a number of stressors that influence the health and resiliency

of Chapin Mesa milkvetch populations, such as competition with nonnative, invasive plant species (*i.e.,* cheatgrass, musk thistle, etc.); wildfire; drought; fire management activities; development of infrastructure; trampling; herbivory; and effects of climate change (Service 2018, pp. 14–24). We found that the primary drivers influencing the species' condition are the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass; and the interaction between these elements, as explained further in the SSA report (Service 2018, p. 14–30). Five large, high intensity fires in the last two decades have occurred on most of the park and a large portion of the adjacent Mesa Verde cueasta (*i.e.,* long, sloping ridge), resulting in burns on a total of 38,704 acres (Floyd *et al.* 2004, p. 270, 283); and a total of approximately 760.5 acres of Chapin Mesa milkvetch habitat that has been burned in Mesa Verde National Park. The invasion of nonnative plant species, which compete with Chapin Mesa milkvetch for space, nutrients, and water, is facilitated by the increased frequency of burns as well as the creation of fire breaks that has occurred within Chapin Mesa milkvetch habitat (CNHP 2006, p.4). Cheatgrass and other invasive nonnative plant species have already invaded different parts of the species range to varying degrees. Cheatgrass was not found in unburned woodland monitoring plots, whereas cheatgrass invasion ranges from 8–58% cover in the burned monitoring plots (Rondeau 2017, p. 11). In addition, the risk of severe fire is expected to increase in the future, with potential for increases in the average frequency, intensity, and size of fires (Rondeau *et al.* 2017, Appendix D, pp. 15–21).

As described above, we divided the range of Chapin Mesa milkvetch into four representative units (Chapin Mesa, West Chapin Spur, Park Mesa, and Ute Mountain Ute Tribal Park) (Service 2018, pp. 24–26). Having a greater number of self-sustaining units distributed across the known range of the species is associated with an overall higher viability of the species into the future. We consider to be the most resilient those units without nonnative, invasive species and development of infrastructure, and with a sufficient percentage of pinyon-juniper canopy cover, an intact native understory, sufficient percentage of seedling survival, and sufficient levels of winter and spring precipitation (Service 2018, pp. 24–34). Our analysis found that all Chapin Mesa milkvetch analysis units currently have moderate levels of resiliency, with one large unburned subunit in good condition.

The viability of the Chapin Mesa milkvetch depends on maintaining multiple, self-sustaining units over time. Climate change models forecast warmer temperatures and a decrease in precipitation, or change in the timing and type of precipitation by the year 2035 (Rondeau *et al.* 2017, Appendix D, p. 15–21; Service 2018, pp. 35–36). Monitoring data have shown that ''wet'' winters precede high Chapin Mesa milkvetch density counts, and dry winters translate to low or no emergence of Chapin Mesa milkvetch in the spring (Service 2018, p. 26). Data collected by the Colorado Natural Heritage Program (CNHP) over 14 years of monitoring have revealed a strong correlation between winter precipitation (as snow) and the density of Chapin Mesa milkvetch plants (Service 2018, p. 26).

Given our uncertainty regarding the future effects of climate change, as well as the other stressors, we projected the resiliency, redundancy, and representation of Chapin Mesa milkvetch under three plausible future scenarios. Our projections incorporate three climate scenarios developed for the North Central Climate Science Center in Fort Collins, Colorado for the San Juan Basin in Southwestern Colorado; Hot and Dry, Moderately Hot, and Warm and Wet (Rondeau *et al.* 2017, Appendix D, p. 15–21). This represents the best available scientific information on potential future climate conditions within the range of Chapin Mesa milkvetch, because it is downscaled for this specific region.

The scenarios we evaluated for Chapin Mesa milkvetch are as follows (scenarios are discussed in greater detail in the SSA report (Service 2018, pp. 36–38)):

- *Scenario 1 (''Optimistic''):* Continuation of the current land management conditions under a ''warm and wet'' future climate change model (RCP 4.5 emissions model);
- *Scenario 2 (''Moderate''):* Slight increase in fire management activities (*i.e.,* fuels reduction) and infrastructure development under a ''moderately hot'' future climate change model (RCP 8.5 emissions model); and
- *Scenario 3 (''Pessimistic''):* Significant increase in fire management activities and infrastructure development under a ''hot and dry'' future climate change model (RCP 8.5 emissions model).

We evaluated each of these scenarios in terms of how it would be expected to impact resiliency, redundancy, and representation of the species by the year 2035. We selected the year 2035 for our evaluation of future scenarios based on available climate projections specific to the San Juan Basin in southwestern Colorado, where Chapin Mesa milkvetch habitat occurs.

We anticipate that the largest Chapin Mesa milkvetch representative unit, Chapin Mesa, will continue to be occupied under all three scenarios, but with reduced levels of resiliency (Service 2018, pp. 38–42). This species inherently has, and has likely always had, a low level of redundancy and representation due to its endemism. Because there is only one large representative unit (Chapin Mesa) and three very small representative units (West Chapin Spur, Park Mesa, and Ute Mountain Ute Tribal Park), this species is at some risk from stochastic and catastrophic events, and may have low adaptability to changing conditions (Service 2018, p. 42).

The SSA report (Service 2018, entire) contains a more detailed discussion of our evaluation of the biological status of the Chapin Mesa milkvetch and the influences that may affect its continued existence. Our conclusions are based upon the best available scientific and commercial data.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Chapin Mesa Milkvetch Status

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.'' For a more detailed discussion on the factors considered when determining whether a species meets the definition of ''endangered species'' or ''threatened species'' and our analysis on how we determine the foreseeable future in making these decisions, please see the *Regulatory Framework* section above.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Chapin Mesa milkvetch. Potential stressors to the Chapin Mesa milkvetch that we evaluated include invasive, nonnative plants (Factor A); wildfires (Factor A); post-fire mitigation (Factor A); wildfire and fuels management (Factor A); trampling and herbivory (Factors A and C); development of infrastructure (Factor A); drought (Factor A); and effects of climate change (Factor A) (Service 2018, pp. 14–24). There is no evidence that overutilization (Factor B) of Chapin Mesa milkvetch, disease (Factor C), or other natural or manmade factors affecting the species (Factor E) are occurring. Existing regulatory mechanisms (Factor D) are discussed below. We evaluated each potential stressor, including its source, affected resources, exposure, immediacy, geographic scope, magnitude, and impacts on individuals and populations, and our level of certainty regarding this information, to determine which stressors were likely to be drivers of the species' current condition (Service 2018, Appendix A).

Our analysis found that the primary drivers of the Chapin Mesa milkvetch current and future condition are the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass; and the interaction between these elements, as explained further in the SSA report (Service 2018, p. 14–30), and summarized here. Invasive, nonnative plants compete with Chapin Mesa milkvetch for space, nutrients, and water, and their invasion has been facilitated by the increased frequency of burns, as well as the creation of fire breaks, that has occurred within Chapin Mesa milkvetch habitat (CNHP 2006, p. 4). Wildfire affects Chapin Mesa milkvetch and its habitat by eliminating the fire-sensitive pinyon-juniper woodlands and native understory that the species needs (Service 2018, p. 26), thereby opening up habitat to be colonized by nonnative grasses and clonal shrub species. Pinyon-juniper woodlands that have been burned extensively by wildfires in the past two decades are being replaced by significant invasions of nonnative species (Floyd *et al.* 2006, p. 1). Cheatgrass was not found in unburned woodland monitoring plots, whereas cheatgrass invasion ranges from 8–58% cover in the burned monitoring plots (Rondeau 2017, p. 11). We do not have percent cover information on other invasive species within Chapin Mesa milkvetch habitat at this time. The abundance of grasses, especially cheatgrass, western wheatgrass (*Pascopyrum smithii*), and smooth brome (*Bromus inermis*), within the species' habitat is outside the natural range of variation, resulting in a lack of bare ground and biological soil crust, and preventing natural succession or return to the pinyon-juniper woodland habitat that Chapin Mesa milkvetch needs, and also reducing the reproductive vigor of Chapin Mesa milkvetch (Rondeau 2017, pers. comm.).

Cheatgrass and other invasive, nonnative plant species have already invaded different parts of the species' range to varying degrees. Five large, high-intensity fires in the last two decades have occurred mostly in Mesa Verde National Park and a large portion of the adjacent Mesa Verde cuesta (*i.e.,* long, sloping ridge) (Floyd *et al.* 2004, pp. 270, 283). A total of approximately 760.5 acres has burned out of the approximately 2,000 ac of Chapin Mesa milkvetch habitat in Mesa Verde National Park. Climate projections for the San Juan Basin, Colorado, where Chapin Mesa milkvetch occurs, include increased temperatures, more intense and longer lasting heat waves, a longer fire season with greater frequency and extent of fires, and an increased probability of drought (Rondeau *et al.* 2017, p. 8). These factors will likely exacerbate the frequency and extent of catastrophic wildfires and the invasion of cheatgrass on Chapin Mesa milkvetch habitat in the future.

Regulatory mechanisms (Factor D) and other management efforts by the National Park Service (NPS) and Ute Mountain Ute Tribe provide some benefit to Chapin Mesa milkvetch, as the species is located entirely within Mesa Verde National Park and the Ute Mountain Ute Tribal Park. However, these efforts have not been able to ameliorate the threat of catastrophic wildfires and nonnative, invasive species. The NPS Organic Act of 1916 (54 U.S.C. 100101 *et seq.*), as amended, states that the NPS ''shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' The NPS Organic Act has provided some benefit to the species by limiting many forms of human disturbance and development that might otherwise occur in unprotected areas. However, other management activities conducted within the Park, such as fuels and fire management, and the development of visitor-related infrastructure, may have direct and indirect impacts to the species. While fuels reduction activities may help decrease the likelihood of catastrophic fires, they may also have detrimental impacts such as trampling, creating surface disturbances and altering ecological conditions, or facilitating nonnative species invasion (Service 2018, pp. 19–22). The development of existing infrastructure, such as roads, parking lots, a wastewater treatment facility, and buildings within the Park has resulted in a loss of approximately 2 percent of Chapin Mesa milkvetch habitat (Service 2018, pp. 19, 23). Several additional infrastructure and fire management projects are planned or under consideration within Mesa Verde National Park (Service 2018, pp. 19, 22–23).

We do not have information regarding management or regulatory mechanisms on the Ute Mountain Ute Tribal Park. However, the fact that the species' habitat occurs within a Tribal Park may provide some protections, as the Tribe restricts human activities and land uses within this area. The Tribal Park unit has limited road access in Chapin Mesa milkvetch habitat; however, it is not often used, except for guided tours (Service 2018, p. 32). This has likely limited the extent of any habitat loss or other human-caused disturbances to the species' habitat.

In September 2018, Mesa Verde National Park finalized a conservation plan (Park plan) for Chapin Mesa milkvetch, which outlines how the Park will implement fire management activities, development of infrastructure, and conservation efforts to benefit Chapin Mesa milkvetch (Mesa Verde National Park, 2018). Once Mesa Verde National Park completes an implementation schedule for this recently finalized plan, the Park plan may be sufficiently certain to be implemented and sufficiently certain to be effective that it may be considered as

part of our final listing determination for the species. The goal of the Park plan is to benefit the species, and decrease the risk of the threats discussed above. Therefore, we seek public comment on this plan, whether it meets our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100, March 28, 2003)) and how it may impact Chapin Mesa milkvetch. Once an implementation schedule for the Park plan has been completed, we will fully evaluate its certainty of implementation and certainty of effectiveness under the PECE policy and its anticipated impact on the species as part of our final determination on the status of Chapin Mesa milkvetch.

Similarly, in January 2020, the Ute Mountain Ute Tribe finalized a conservation plan (Tribal plan) for Chapin Mesa milkvetch, which was adopted by Resolution by the Ute Mountain Ute Tribal Council in February 2020 (Ute Mountain Ute Tribe, 2020). The Tribal plan identifies conservation strategies the Tribe will use on the Ute Mountain Ute Indian Reservation to enhance the resiliency, redundancy, and representation of Chapin Mesa milkvetch. The Tribal Plan calls for management decisions that mitigate direct and indirect impacts to the species and result in the distribution of the species across high-quality, contiguous habitat spanning a range of ecological conditions. We will continue to work with the Tribe to determine whether the Tribal plan may be sufficiently certain to be implemented and sufficiently certain to be effective that it can be considered as part of our final listing determination for the species. Therefore, we seek public comment on this plan, whether it meets our PECE Policy (68 FR 15100, March 28, 2003)) and how it may impact Chapin Mesa milkvetch.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We find that the Chapin Mesa milkvetch is likely to become endangered within the foreseeable future throughout all of its range. While the species currently has one large subunit with high levels of resiliency (the Chapin Mesa unburned subunit) (Service 2018, entire), as a narrow endemic with a limited range, the species as a whole has low levels of redundancy, making it vulnerable to future catastrophic events such as fire, which are projected to occur with greater frequency and extent.

The Chapin Mesa representative unit encompasses 97 percent of the range within Mesa Verde National Park, and one or more catastrophic events could potentially affect the entire unit, or even multiple units, by eliminating or degrading the habitat conditions that the Chapin Mesa milkvetch needs to survive and successfully reproduce. Five large, high-intensity fires have already occurred in the immediate vicinity of Chapin Mesa milkvetch habitat within the last two decades. Given the increasing prevalence of nonnative, invasive species such as cheatgrass, and climate change projections, the frequency and intensity of fires is expected to increase in the future. The high potential for a future catastrophic event that could affect all or a large portion of the species' range puts the Chapin Mesa milkvetch at increased risk of extinction in the foreseeable future. We consider the foreseeable future for the Chapin Mesa milkvetch to be approximately through the year 2035, based on available climate data specific to the San Juan Basin in Southwestern Colorado, where Chapin Mesa milkvetch habitat occurs, as discussed above. Thus, after assessing the best available information, we determine that Chapin Mesa milkvetch is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future, throughout all of its range.

We find that the Chapin Mesa milkvetch is not currently in danger of extinction throughout its range because the species currently has a large representative subunit (the unburned Chapin Mesa subunit) that is considered highly resilient, based on the quality of habitat conditions for Chapin Mesa milkvetch. This large area of habitat (1,265 acres (512 hectares)) and good conditions in this subunit likely provide the Chapin Mesa milkvetch some ability to currently withstand stochastic events, such as drought, that are within the normal range of yearly variation, and to complete its life cycle. Therefore, the risk of extinction is currently low, and the species is not currently in danger of extinction throughout its range. However, the risk of one or more future catastrophic events such as severe wildfire occurring puts the species at risk of extinction in the forseeable future due to its limited redundancy.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the increased frequency of large, high-intensity wildfires (Factor A); the increasing presence of invasive, nonnative plants, especially cheatgrass (Factor A); and the interaction between these elements put Chapin Mesa milkvetch at risk of extinction throughout its range in the foreseeable future due to its limited redundancy. Thus, after assessing the best available information, we determine that the Chapin Mesa milkvetch is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Determination of 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. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. 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 other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Chapin Mesa milkvetch, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

Chapin Mesa milkvetch is a narrow endemic that functions as a single, contiguous population and occurs

within a very small area. As described in the SSA Report (Service 2018, p. 4), the species' global distribution is constrained almost entirely to Chapin Mesa in southern Colorado, with some outlying subunits on neighboring Park Mesa and West Chapin Spur (Rondeau 2017, p. 1). Chapin Mesa milkvetch habitat occupies approximately 2,000 ac (809 ha) in Mesa Verde National Park (CNHP 2010, pp. 12–19; Anderson 2004, p. 25, 30). This species is considered to consist of one large interconnected population, and like many rare plants, Chapin Mesa milkvetch is globally rare, but is locally abundant throughout its occupied habitat (Rondeau 2017, p. 1). Thus, there is no biologically meaningful way to break this limited range into portions, and the threats that the species faces affect the species throughout its entire range. This means that no portions of the species' range have a different status from its rangewide status. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Chapin Mesa milkvetch meets the definition of a threatened species. Therefore, we propose to list the Chapin Mesa milkvetch as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary of the Interior (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for

Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

There is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. We have determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Chapin Mesa milkvetch and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent we have determined that the designation of critical habitat is prudent for the Chapin Mesa milkvetch.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Chapin Mesa milkvetch is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Chapin Mesa milkvetch.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as:

> The features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding

or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Our SSA report for the Chapin Mesa milkvetch provides the scientific information upon which this proposed critical habitat designation is based (Service 2018). A thorough account of the ecological needs of the Chapin Mesa milkvetch can be found in the SSA report (Service 2018, chapter 2), and is briefly summarized here in the context of the physical or biological features that are essential to the conservation of the species.

Space for Individual and Population Growth

Habitat: Chapin Mesa milkvetch occurs in dense pinyon-juniper woodlands of mesa tops in the Mesa Verde area and the Ute Mountain Ute Tribal Park. Chapin Mesa milkvetch is found in both old-growth and recent lightly burned pinyon-juniper woodlands. The species occurs at elevations between 6,500 to 7,500 feet (ft) (1,981 to 2,286 meters (m)). Pinyon-juniper canopy cover is an essential habitat component for Chapin Mesa milkvetch because it provides shelter from direct sunlight and freezing winter conditions. Areas of sufficient pinyon-juniper canopy cover (40 percent cover or more) provide for better habitat, and, therefore, more resilient populations.

Intact native understory is important for Chapin Mesa milkvetch because it supports pollinators and contributes to ecosystem stability. Intact native understory is comprised of four components: Biological soil crust, native wildflowers, bare ground, and duff (dead plant material). Intact native understory communities consist of native plants, including *Purshia tridentata* (bitterbrush), *Poa fendleriana* (muttongrass), *Penstemon linarioides* (Colorado narrowleaf beardtongue), *Opuntia polyacantha* (plains pricklypear), *Yucca baccata* (yucca), *Comandra umbellata* (bastard toadflax), *Pedicularis centranthera* (Great Basin lousewort), *Polygonum sawatchense* (Sawatch knotweed), *Lupinus ammophilus* (sand lupine), *Astragalus scopulorum* (Rocky Mountain milkvetch), *Artemisia tridentata* (big sagebrush), *Juniperus osteosperma* (Utah juniper), and *Pinus edulis* (pinyon pine) (Peterson 1981, p. 13).

Space for pollinators: Chapin Mesa milkvetch requires pollination by insects to set fruit; flowers require a strong insect for pollination because the insect must force itself between the petals of the papilionaceous flowers (Green 2012, p. 2). The long-horned bee (*Eucera fulvitarsis*), Anthophorid bees, and Bombyliid flies have been observed pollinating Chapin Mesa milkvetch. These large pollinators are essential to Chapin Mesa milkvetch for long-term successful reproduction and conservation of the plant. We have identified pollinators and their associated habitats as an essential biological feature for Chapin Mesa milkvetch.

Soils: Chapin mesa milkvetch grows primarily in deep, reddish, loess (loosely packed, windblown sediment) soils, with a loam to sandy loam texture.

Climate: As discussed above, spring and winter (snow) precipitation that is greater than 25 percent below the 30-year average (1971–2000) (*i.e.,* greater than 3.24 inches and 3.46 inches, respectively) provides appropriate soil moisture for the Chapin Mesa milkvetch. The emergence and density of Chapin Mesa milkvetch are strongly tied to winter precipitation. Years with ''wet'' winters (precipitation falling primarily as snow) precede high density counts, and years with dry winters translate to low or no emergence (Rondeau 2017, p. 3). Climate requirements for seedling emergence and survival are not well known; however, we infer that spring moisture is also critical, as seedling survival relies on growing deep roots quickly (Rondeau 2017, p. 9). It is likely that winter moisture coupled with winter temperature is also important for seedlings due to available soil moisture for seedling survival (Rondeau 2017, p. 16).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Chapin Mesa milkvetch from studies of this species' habitat, ecology, and life history as described above. Additional information can be found in the Chapin Mesa Milkvetch Species Status Assessment Report (Service 2018). We have determined that the following physical or biological features are essential to the conservation of the Chapin Mesa milkvetch:

(1) Deep, reddish, loess soils with a loam to sandy loam soil texture.

(2) Pinyon juniper canopy cover of at least 40 percent.

(3) Elevations from 6,500 to 7,500 feet (1,981 to 2,286 meters), primarily on mesa tops.

(4) Intact native understory with plant communities that are reflective of historical community composition, and with biological soil crust, bare ground, and duff present.

(5) Habitat for pollinators, including:

(a) Nesting and foraging habitats that are suitable for a wide array of large pollinators and their life-history requirements; and

(b) Connectivity between areas that allow pollinators to move from site to site within each subpopulation of Chapin Mesa milkvetch.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Chapin Mesa milkvetch may require special management considerations or protections to reduce the following threats: Competition with nonnative, invasive plant species (*i.e.,* cheatgrass, musk thistle, etc.); wildfire; fire management activities; development of infrastructure; and the effects of drought and climate change. Management activities that could help ameliorate these threats include, but are not limited to, invasive species management; fuels reduction and thinning; and timing restrictions on these activities, as well as habitat restoration projects.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data

available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We consider any proposed unit ''occupied'' if the plant persists within the unit, as explained below.

Currently occupied habitat areas on West Chapin Spur and Park Mesa are confined to small patches (ranging in size from 8 to 52 acres). The area surrounding these occupied patches appears to contain similar habitat, although the species has not been found there. Chapin Mesa milkvetch requires large pollinators, and the small patches of occupied habitat on West Chapin Spur and Park Mesa may not, by themselves, provide enough habitat to support pollinators. In addition, these patches of occupied habitat likely have low resiliency to stochastic events due to their small size. The areas surrounding these patches are also included within the proposed occupied units because they provide space for population expansion that would increase the resiliency of these units, provide connectivity between individual patches of occupied habitat, and support the large pollinators that Chapin Mesa milkvetch needs to support reproduction.

The SSA report contains much of the information used to identify critical habitat for the Chapin Mesa milkvetch, which includes existing State and National Park monitoring data, population status surveys, and relevant Geographic Information Systems (GIS) layers (Service 2018).

Areas Occupied at the Time of Listing

The proposed critical habitat designation includes all areas that are known to be occupied by the species, based on survey data by CNHP. We consider any proposed unit ''occupied'' if the plant occurs within the unit. The units all contain the physical or biological features within their boundaries (although not all of the physical or biological features may be found in every location within each occupied unit), and include parts of Chapin Mesa, West Chapin Spur, and Park Mesa. As the data on occupied areas within the Ute Mountain Ute Tribal Park are very coarse scale and not recent (from 1987), we refine the boundaries of this proposed unit to only include areas on Chapin Mesa, where the species is actually known to occur, as described below.

Areas Outside of the Geographic Range at the Time of Listing

We are not currently proposing to designate any areas outside the geographical area occupied by the Chapin Mesa milkvetch.

Summary

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

Areas that are considered to be occupied at the time of listing, and that contain the physical or biological features to support life-history functions that are essential for the conservation of the species. These areas are consistent with the identified representative units in the SSA report that were derived using GIS polygons from CNHP. However, the Ute Mountain Ute Tribal Park unit (proposed Unit 4) was further refined to exclude valleys and other mesa tops where the species has not previously been found. While we recognize this unit has artificially straight boundaries on the north and west sides, this is based on the best available information on occupied areas within the Ute Mountain Ute Tribal Park. Areas that surround the occupied areas in the Park Mesa Unit (proposed Unit 2) and the West Chapin Spur Unit (proposed Unit 3) that contain the physical or biological features to support life-history functions that are essential for the conservation of the species are included in this proposed critical habitat designation. These proposed units were derived using: (1) An 800-meter (0.5-mile) distance around occupied polygons to provide for sufficient supporting habitat for the Chapin Mesa milkvetch's insect pollinators (Walther-Hellwig, K. and R. Frankl. 2000, pp. 299–306); (2) specific elevation ranges of 7,090–7,411 ft (2,161–2,259 m) and 6,952–7,126 ft (2,119–2,172 m), respectively, that are within the elevation ranges occupied by the species; and (3) vegetation type. These elevations were determined through a GIS exercise that identified the high and low points of both Park Mesa and West Chapin Spur; this was done to exclude drainages and valleys, where the species is not known to persist, from the occupied units.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Chapin Mesa milkvetch. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is made final as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and contain the physical or biological features that are essential to support life-history processes of the Chapin Mesa milkvetch. We are proposing four units for designation based on the physical or biological features being present to support Chapin Mesa milkvetch's life-history processes. These units all contain the physical or biological features to support Chapin Mesa milkvetch within their boundaries (although not all of the physical or biological features may be found in every location within each unit).

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2018–0055, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the Chapin Mesa milkvetch. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Chapin Mesa milkvetch. The areas we

propose as critical habitat are: (1) Chapin Mesa Unit; (2) Park Mesa Unit; (3) West Chapin Spur Unit; and (4) Ute Mountain Ute Tribal Park Unit. Table 1 displays the occupancy status of the units, landownership, and approximate areas of the proposed designated areas for Chapin Mesa milkvetch.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS AND OCCUPANCY OF CHAPIN MESA MILKVETCH

Unit No.	Unit name	Occupancy/ presence	Ownership	Acres (hectares)
1	Chapin Mesa	Occupied	Mesa Verde National Park	1,976 (800)
2	Park Mesa	Occupied	Mesa Verde National Park	417 (167)
3	West Chapin Spur	Occupied	Mesa Verde National Park	101 (41)
4	Ute Mountain Ute Tribal Park	Occupied	Ute Mountain Ute Tribal Park	1,141 (462)
Total				3,635 (1,471)

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for the Chapin Mesa milkvetch, below.

Unit 1: Chapin Mesa

Unit 1 consists of 1,976 ac (800 ha) on the northern end of Chapin Mesa that is within Mesa Verde National Park (MVNP). Chapin Mesa milkvetch is distributed, at some level, throughout this entire unit; this unit contains the physical or biological features essential to the conservation of the species. This is the largest unit that contains large areas of intact habitat; however, the physical or biological features are not distributed equally throughout the unit. This unit may require special management considerations or protections to address threats such as wildfire, development of infrastructure, wildfire and fuels reduction activities, livestock removal activities, maintenance of park infrastructure, and weed management activities.

Unit 2: Park Mesa

Unit 2 consists of 417 ac (167 ha) on neighboring Park Mesa (to the northeast of Chapin Mesa) that is within MVNP. Chapin Mesa milkvetch is sparsely distributed throughout this unit; this unit contains the physical or biological features essential to the conservation of the species. This unit may require special management considerations or protections to address threats such as weed management activities, wildfire, wildfire and fuels reduction activities, and livestock removal activities.

Unit 3: West Chapin Spur

Unit 3 consists of 101 ac (41 ha) on neighboring West Chapin Spur (to the west of Chapin Mesa) that is within MVNP. Chapin Mesa milkvetch is sparsely distributed throughout this unit. This unit contains the physical or biological features essential to the conservation of the species; however, the habitat in this unit was highly altered by the Long Mesa Fire of 2002, leaving small areas of intact habitat where Chapin Mesa milkvetch persists. This unit may require special management considerations or protections to address threats such as weed management activities, wildfire, wildfire and fuels reduction activities, and livestock removal activities.

Unit 4: Ute Mountain Ute Tribal Park

Unit 4 consists of 1,141 ac (462 ha) on the southern end of Chapin Mesa that is within the Ute Mountain Ute Tribal Park. Chapin Mesa milkvetch is distributed throughout this unit; this unit contains the physical or biological features essential to the conservation of the species. This unit contains large areas of intact habitat. This unit may require special management considerations or protections to address threats such as weed management activities, wildfire, wildfire and fuels reduction activities, and livestock removal activities.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director of the Service's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would remove or significantly alter habitat. Such activities could include, but are not limited to, road maintenance, recreation or maintenance of recreational trails, wildfire and fuels reduction activities, development of infrastructure, infrastructure maintenance, weed management activities, and livestock removal activities (as a result of trespass issues from cattle and wild horses). These activities could eliminate or reduce intact habitat or result in loss of Chapin Mesa milkvetch plants.

(2) Actions that would result in the introduction, spread, or augmentation of nonnative, invasive plant species. Such activities could include, but are not limited to, post fire seeding activities or weed management activities. These activities could introduce or open habitat up for nonnative, invasive plant species that compete with Chapin Mesa milkvetch for space and nutrients.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under [section 101 of the Sikes Act (16 U.S.C. 670a)], if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction of adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of Chapin Mesa milkvetch, the benefits of critical habitat include public awareness of the presence of Chapin Mesa milkvetch and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Chapin Mesa milkvetch due to protection from destruction or adverse modification of critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. Continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion,

we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land and water uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species.

In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Chapin Mesa milkvetch (Abt Associates 2018). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that would protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that would be already subject to such protections and are, therefore, unlikely to incur incremental economic impacts.

Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our draft economic analysis of the proposed critical habitat designation for the Chapin Mesa milkvetch and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely to be affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Chapin Mesa milkvetch, first we identified, in the IEM dated May 2, 2018, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management activities (National Park Service); (2) road and trail construction and maintenence; (3) wildfire and fuels reduction activities; (4) weed management activities; (5) livestock removal activities; (6) development of infrastructure and maintenence; and (7) recreation (including camping, hiking, and biking). We considered each activity or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If Chapin Mesa milkvetch is listed under the Act, in areas where the species is present, Federal agencies already would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Chapin Mesa milkvetch. Because the designation of critical habitat for Chapin

Mesa milkvetch is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat.

However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Chapin Mesa milkvetch would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Chapin Mesa milkvetch totals approximately 3,635 ac (1,471 ha), of which approximately 69 percent is owned and managed by the Federal Government (located within MVNP) and approximately 31 percent is owned and managed by the Ute Mountain Ute Tribe. Actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of Chapin Mesa milkvetch. Therefore, only administrative costs are expected for the approximately 69 percent of the proposed critical habitat designation that occurs on Federal lands. Administrative costs include the additional effort from the Service and the federal action agency to consider critical habitat for Chapin Mesa milkvetch in a section 7 consultation that already considers the presence of Chapin Mesa milkvetch. The remaining 31 percent of the proposed critical habitat designation is found in remote areas, where limited activity takes place, on Tribal lands.

The proposed critical habitat designation for the Chapin Mesa milkvetch is unlikely to generate costs exceeding $100 million in a single year, because the species is present in all of the proposed critical habitat areas, and the only incremental costs that are predicted are the administrative costs of considering adverse modification during section 7 consultations, as noted above (Abt Associates 2018). No additional Federal or Tribal laws are expected to be triggered due to the proposed designation of critical habitat, and no State or local laws or regulations apply, as the proposed designation is solely on Federal and Tribal lands. Stigma effects are likely to be minimal because National Park Service and Ute Mountain Ute Tribal Reservation regulations already limit land uses in all proposed critical habitat units.

There is no information to indicate that any concentration of impacts to any geographic area or sector is likely (Abt Associates 2018). Unit 1 (the Chapin Mesa unit) has greater potential for section 7 consultations because of the number of projects that could affect the species, relative to the other units, which are more remote. However, the incremental costs of those section 7 consultations are likely to be very small. In summary, we conclude that the proposed critical habitat designation for Chapin Mesa milkvetch is unlikely to generate incremental costs exceeding $100 million in a single year.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat Unit 4 (Ute Mountain Ute Tribal Park) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We are considering whether or not to exclude proposed Unit 4 (Ute Mountain Ute Tribal Park unit) under section 4(b)(2) of the Act from the final critical habitat designation for the Chapin Mesa milkvetch. In that proposed unit, 1,141 ac (462 ha) meet the definition of critical habitat, but are all being considered for possible exclusion from the final critical habitat designation, as they occur within a Tribal Park where human activity and land uses are restricted, as explained further below. In addition, the Tribe has finalized a conservation plan intended to benefit the conservation of Chapin Mesa milkvetch and its habitat, and we will consider this Tribal plan as appropriate in our determination on whether to exclude this unit. We specifically solicit comments on the inclusion of this area in, or the exclusion of this area from, the final critical habitat designation. In the paragraphs below, we provide a detailed analysis of our consideration of these lands for exclusion under section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. The Service has identified the following land-use activities that may affect Chapin Mesa milkvetch proposed critical habitat within Federal lands: road maintenance, recreation or maintenance of recreational hiking trails, fire management plans, development of infrastructure, and infrastructure maintenance. Within Tribal lands, the Service has not identified any activities that may affect the Chapin Mesa milkvetch due to the remoteness of the proposed critical habitat unit and because the Tribe restricts visitor activities and land uses within the area containing proposed Unit 4.

During the development of a final designation, we will consider any additional economic impact information we receive during the public comment period, and, as such, areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Impacts on National Security and Homeland Security

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Chapin Mesa milkvetch are not owned, managed, or utilized by the Department of Defense or the Department of Homeland Security, and, therefore, we anticipate no impact on

national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Tribal Lands

There are several Executive Orders, Secretarial Orders, and policies that relate to working with Tribes, as described further below. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, Secretarial Order 3206, ''American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The appendix (sec. 3(B)(4)) to the Order also states, ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat, nor does it state that Tribal lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority.

Ute Mountain Ute Tribal Management or Conservation Plan or Partnership: Proposed Unit 4 of Chapin Mesa milkvetch critical habitat occurs entirely within Ute Mountain Ute Tribal lands, managed as a Tribal Park. The Tribe allows only limited human activities within the Tribal Park, such as guided tours, and there is limited road access within Chapin Mesa milkvetch habitat in this area (Service 2018, p. 32). This type of management by the Tribe has likely protected the Chapin Mesa milkvetch and its habitat from most human-caused disturbance and development. In addition, in January 2020, the Ute Mountain Ute Tribe finalized a conservation plan for Chapin Mesa milkvetch, which identifies conservation strategies the Tribe will use on the Ute Mountain Ute Indian Reservation to enhance the resiliency, redundancy, and representation of Chapin Mesa milkvetch. We will evaluate the certainty of implementation and effectiveness of this Tribal plan, and how it may impact the species, along with the protections already provided by existing management of Tribal Park. We intend to give strong consideration to exclusion of proposed critical habitat unit 4 from our final critical habitat determination.

A final determination on whether the Secretary will exercise his discretion to exclude this area from critical habitat for the Chapin Mesa milkvetch will be made when we publish the final rule designating critical habitat. We will take into account public comments and carefully weigh the benefits of exclusion versus inclusion of this area.

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 of when a species may be ready for reclassification from endangered to threatened (*i.e.,* ''downlisting'') or removal from the Lists of Endangered and Threatened Wildlife and Plants (*i.e.,* ''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 Colorado Ecological Services Field 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 (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, 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 Colorado would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Chapin Mesa milkvetch. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Chapin Mesa milkvetch is only proposed for listing under the Act at this time, 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 on Federal lands administered by the National Park Service (Mesa Verde National Park).

Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference' to the agency. *See Webster* v. *Doe,* 486 U.S. 592 (1988). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1). . . . or 9(a)(2).'' Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition. See *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). Courts have also approved 4(d) rules that do not address all of the threats a species faces. *See State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species,'' or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the prohibitions, and exceptions to those prohibitions, will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The Service has developed a species-specific 4(d) rule that is designed to address the Chapin Mesa milkvetch's specific threats and conservation needs. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this regulation as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Chapin Mesa milkvetch. As discussed in the Summary of Biological Status and Threats section, the Service has concluded that the Chapin Mesa milkvetch is at risk of extinction within the foreseeable future primarily due to the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass; and the interaction between these elements. The provisions of this proposed 4(d) rule would promote conservation of the Chapin Mesa milkvetch by encouraging management of the landscape in ways that meet land management considerations while meeting the conservation needs of the Chapin Mesa milkvetch. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the Chapin Mesa milkvetch. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the Chapin Mesa milkvetch as a threatened species.

Provisions of the Proposed 4(d) Rule

The proposed 4(d) rule would make it illegal for any person subject to the jurisdiction of the United States to remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or

destroy the species on any area under Federal jurisdiction; or remove, cut, dig up, or damage or destroy the species on any area under Federal jurisdiction in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. This proposed 4(d) rule would enhance the conservation of Chapin Mesa milkvetch by prohibiting activities that would be detrimental to the species.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.72. With regard to threatened plants, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

The proposed 4(d) rule only addresses Federal Endangered Species Act requirements, and would not change any prohibitions provided for by State law. Additionally, nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of Chapin Mesa milkvetch. However, the consultation process may be further streamlined through planned programmatic consultations between Federal agencies and the Service for these activities. This proposed 4(d) rule would apply only if and when the Service makes final the listing of Chapin Mesa milkvetch as threatened.

We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

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 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) Normal nonnative, invasive species control practices, such as herbicide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(2) Annual monitoring efforts; and

(3) Additional surveys to understand the extent of occupied habitat.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized damage or collection of Chapin Mesa milkvetch from lands under Federal jurisdiction; and

(2) Destruction or degradation of the species' habitat on lands under Federal jurisdiction, including the intentional introduction of nonnative organisms that compete with, consume, or harm Chapin Mesa milkvetch.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this proposed rule.

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

Executive Order 13771

We do not believe this proposed rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual

basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this proposed critical habitat designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt this proposed designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if adopted, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed designation of critical habitat will significantly affect energy supplies, distribution, or use. We are not aware of any energy-related activities or facilities within the boundaries of the proposed critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7.

While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because all of the lands being proposed for critical habitat designation are either Federal or Tribal lands. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Chapin Mesa milkvetch in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of

critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for Chapin Mesa milkvetch would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Colorado. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule would not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government.

The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of Chapin Mesa milkvetch, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We invite the public to comment on the extent to which this proposed regulation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this proposed rule.

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.

There are Tribal lands within the Ute Mountain Ute Tribal Park included in this proposed designation of critical habitat, representing one of the four units and 31 percent of the proposed critical habitat designation. Using the criteria found in *Criteria Used To Identify Critical Habitat,* we have determined that the area proposed for designation on Tribal lands is occupied and contains the physical or biological features essential to the conservation of the species. We have coordinated with the Ute Mountain Ute Tribe regarding the species status assessment that informed this proposed listing determination, and provided the Tribe with an opportunity to review the SSA report. We will continue to coordinate with the Tribe throughout the development of the final listing determination and designation of critical habitat for Chapin Mesa

milkvetch, and we will evaluate the conservation plan for Chapin Mesa milkvetch that was finalized by the Tribe in January 2020. We will give strong consideration to excluding Tribal lands from the final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act.

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 Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Mountain Prairie Regional Office and the Colorado Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for ''*Astragalus schmolliae*'' in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants:				
*	*	*	*	*
Astragalus schmolliae.	Chapin Mesa milkvetch.	Wherever found ..	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.73(c); [4d] 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Add § 17.73 to read as set forth below:

§ 17.73 Special rules—flowering plants.

(a) [Reserved]

(b) [Reserved]

(c) *Astragalus schmolliae* (Chapin Mesa milkvetch).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to Chapin Mesa milkvetch. Except as provided under paragraph (c)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.61(c)(1) for endangered plants.

(ii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.72.

(ii) Remove and reduce to possession from areas under Federal jurisdiction as set forth at § 17.71(b).

■ 4. Amend § 17.96(a) by adding an entry for ''*Astragalus schmolliae* (Chapin Mesa milkvetch)'' in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Fabaceae: *Astragalus schmolliae* (Chapin Mesa milkvetch)

(1) Critical habitat units are depicted for Montezuma County, Colorado, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Chapin Mesa milkvetch consist of the following components:

(i) Deep, reddish, loess soils with a loam to sandy loam soil texture.

(ii) Pinyon juniper canopy cover of at least 40 percent.

(iii) Elevations from 6,500 to 7,500 feet (1,981 to 2,286 meters), primarily on mesa tops.

(iv) Intact native understory with plant communities that are reflective of historical community composition, and with biological soil crust, bare ground, and duff present.

(v) Habitat for pollinators, including:

(A) Nesting and foraging habitats that are suitable for a wide array of large pollinators and their life-history requirements; and

(B) Connectivity between areas that allow pollinators to move from site to site within each subpopulation of Chapin Mesa milkvetch.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of the National Agriculture Imagery Program aerial imagery file, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 13N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2018–0055 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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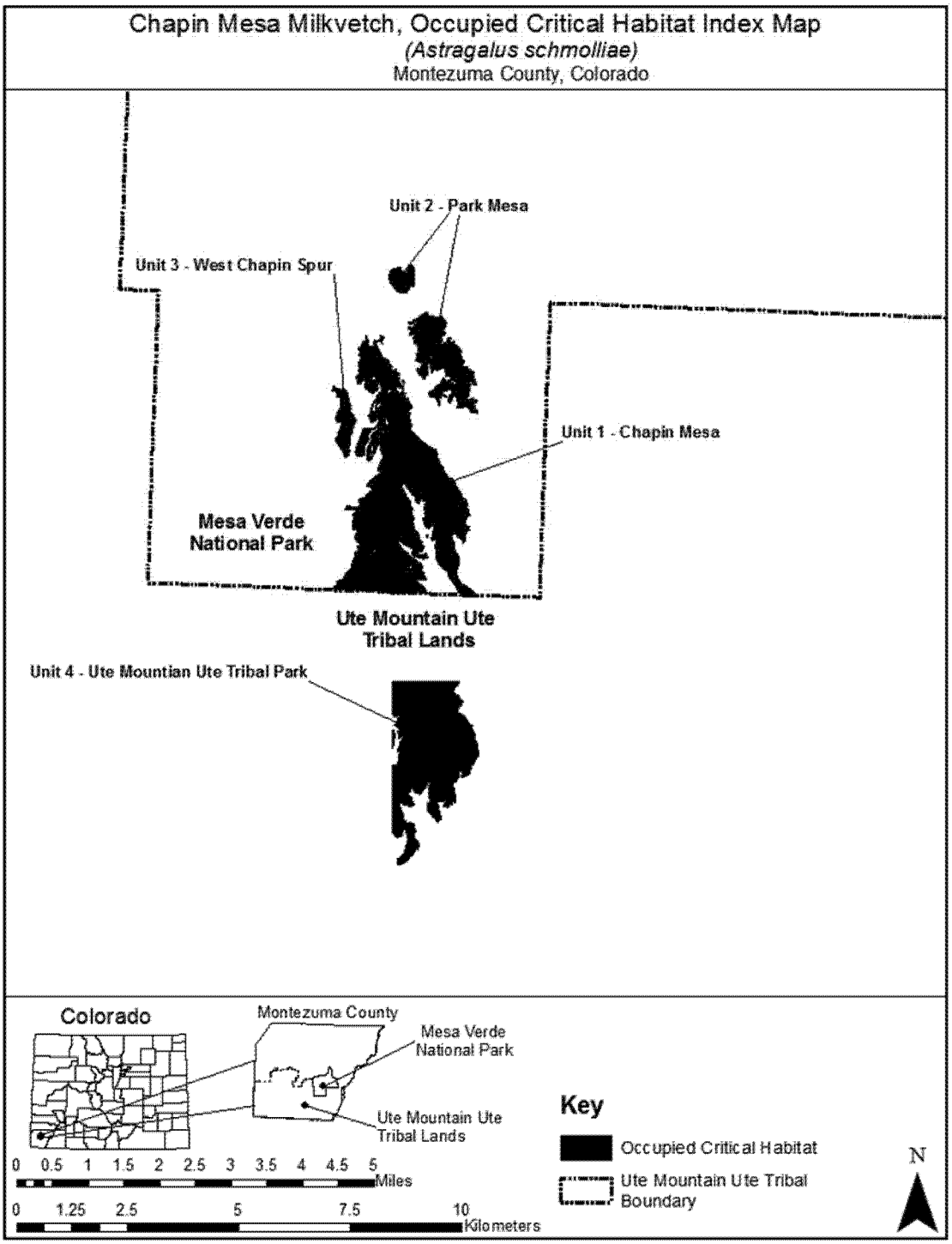
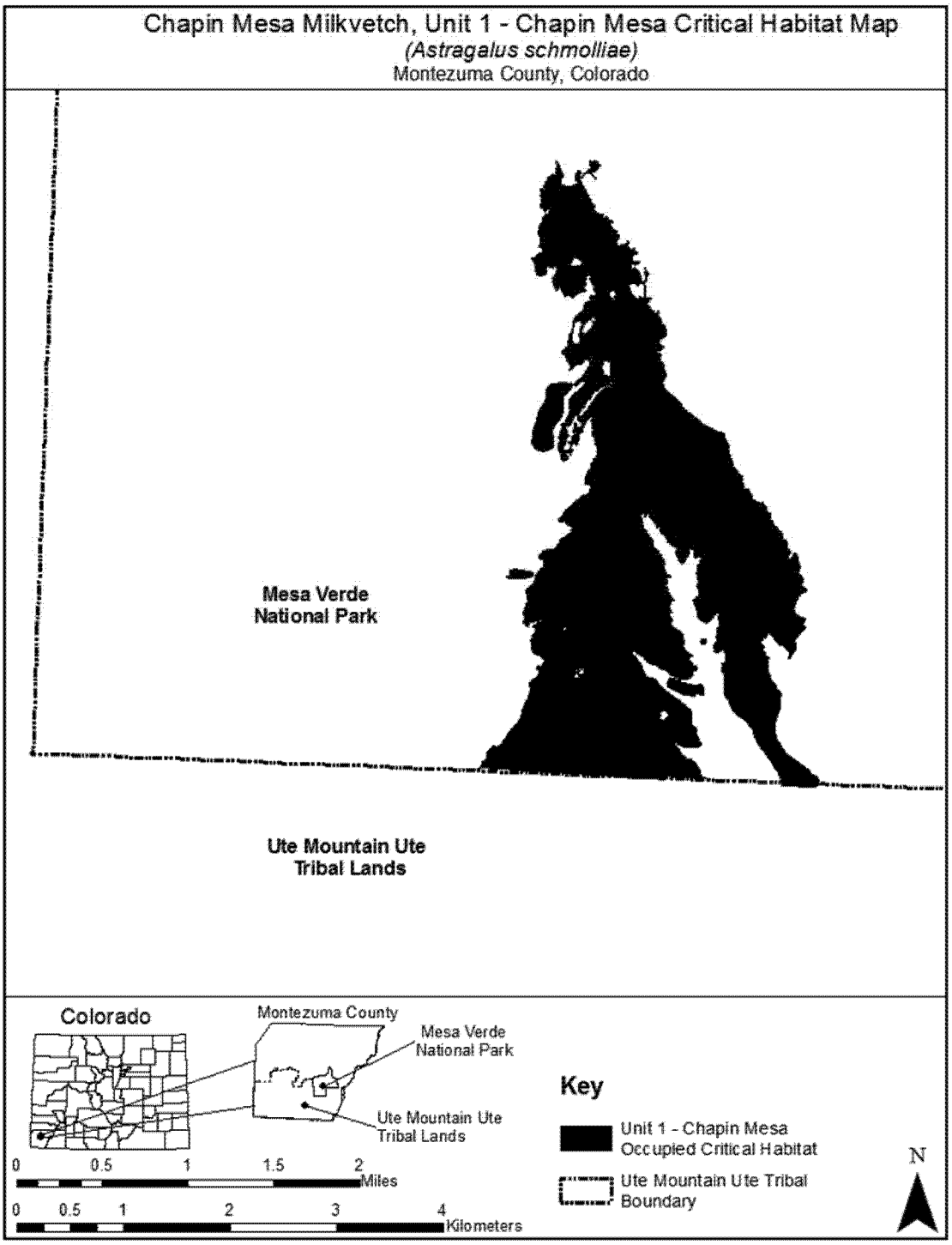


(6) *Unit 1:* Chapin Mesa, Montezuma County, Colorado.

(i) *General description:* Unit 1 consists of 1,976 acres (800 hectares) in Montezuma County, Colorado, and is composed of lands in Mesa Verde National Park.

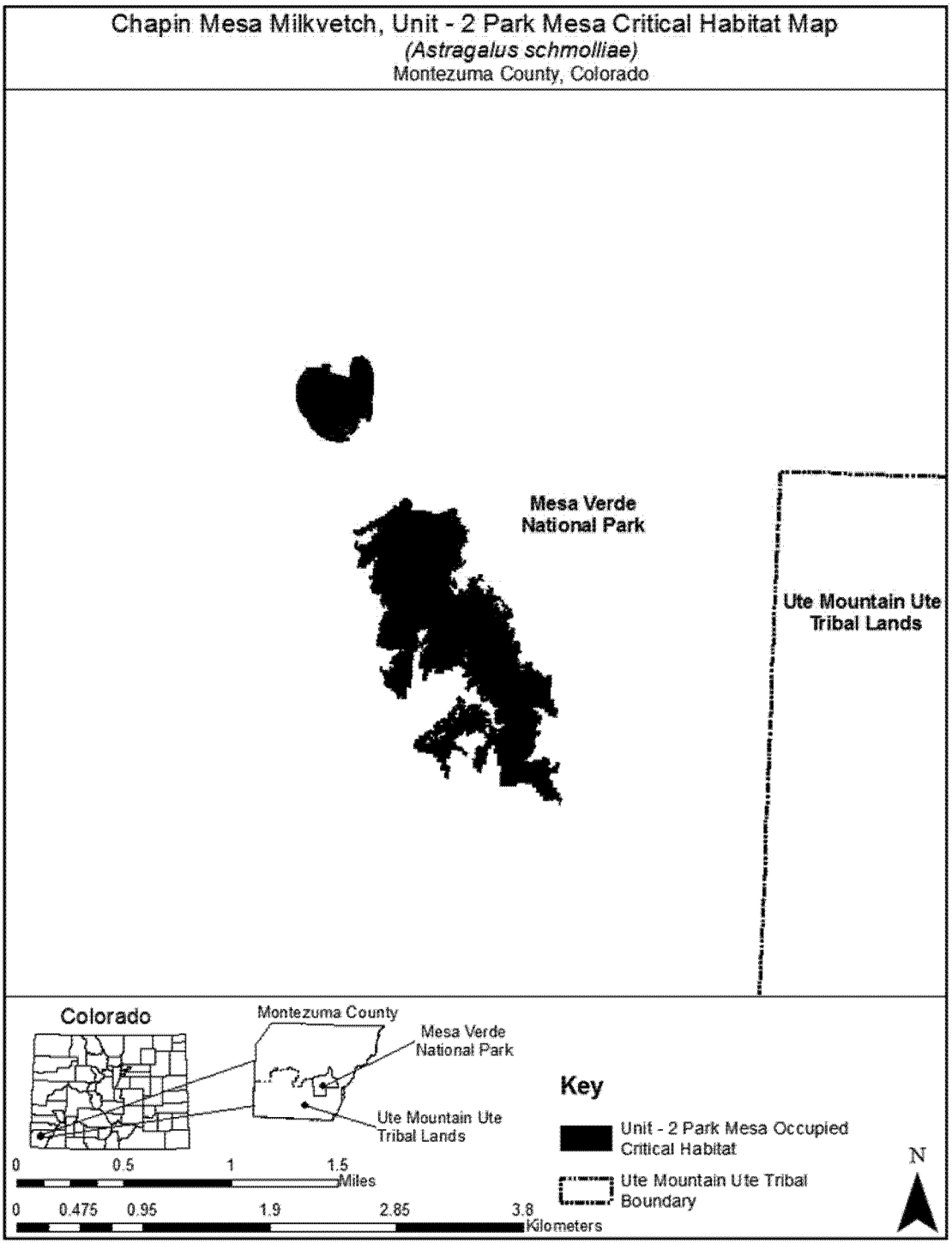
(ii) Map of Unit 1 follows:



(7) *Unit 2:* Park Mesa, Montezuma County, Colorado.

(i) *General description:* Unit 2 consists of 417 acres (167 hectares) in Montezuma County, Colorado, and is composed of lands in Mesa Verde National Park.

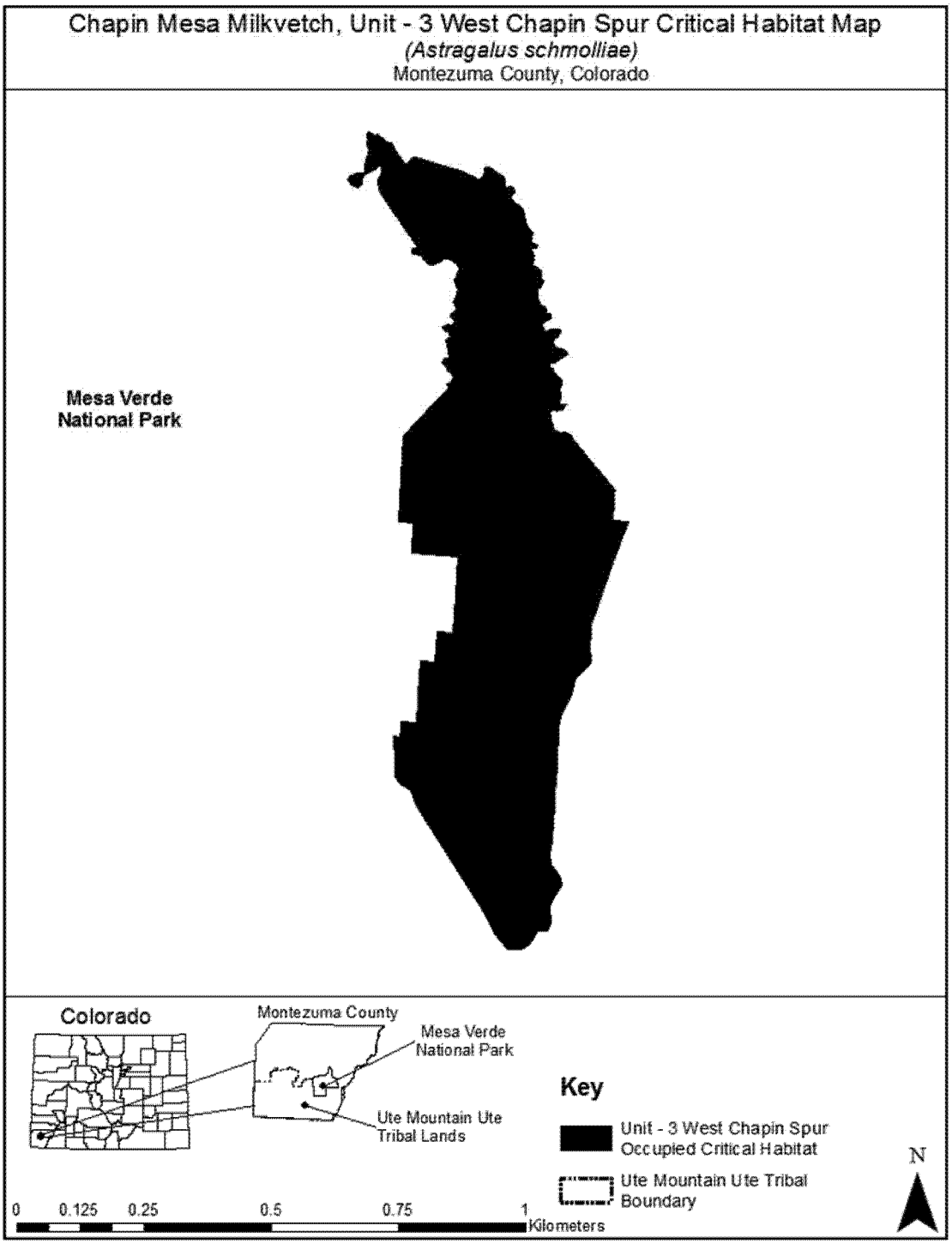
(ii) Map of Unit 2 follows:



(8) *Unit 3:* West Chapin Spur, Montezuma County, Colorado.

(i) *General description:* Unit 3 consists of 101 acres (41 hectares) in Montezuma County, Colorado, and is composed of lands in Mesa Verde National Park.

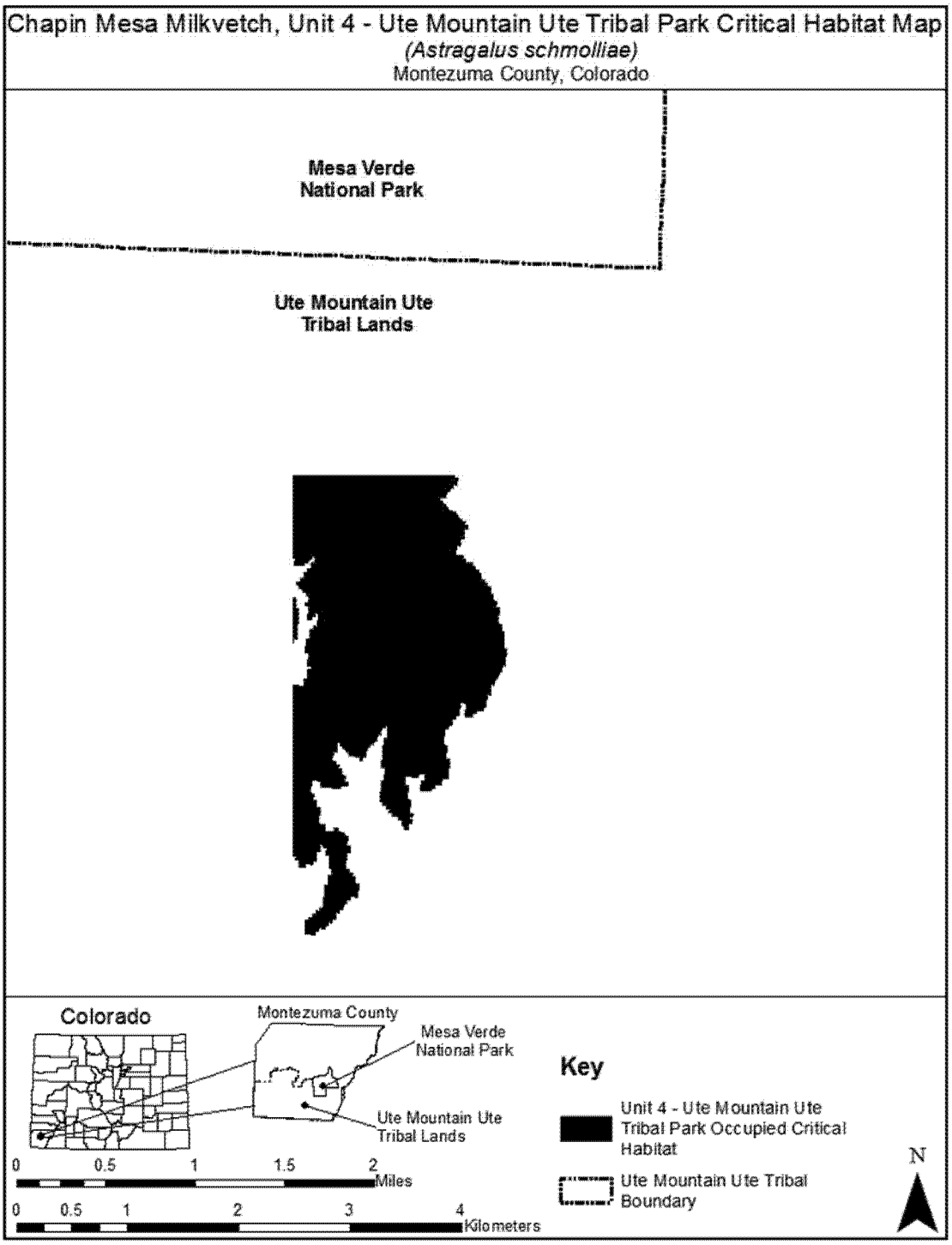
(ii) Map of Unit 3 follows:



(9) *Unit 4:* Ute Mountain Ute Tribal Park, Montezuma County, Colorado.

(i) *General description:* Unit 4 consists of 1,141 acres (462 hectares) in Montezuma County, Colorado, and is composed of lands in the Ute Mountain Ute Tribal Park.

(ii) Map of Unit 4 follows:



* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19481 Filed 9–16–20; 8:45 am]

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