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Proclamation 10083 of September 25, 2020**The President****Gold Star Mother's and Family's Day, 2020****By the President of the United States of America****A Proclamation**

The brave men and women of our Armed Forces represent the very best of our great Nation, matched only by the families who walk beside them in their service. It is our sacred duty to recognize the unending and immeasurable sacrifices our military families make in support of their loved ones and for our country, and we are cognizant of the fortitude they show enduring the anguish of knowing that their hero may never return home. On this Gold Star Mother's and Family's Day, we solemnly honor the memory of every lost Soldier, Sailor, Airman, Marine, and Coast Guardsman, and we humbly grieve with their families who persevere with remarkable courage, strength, and grace.

Today, and every day, we hold in our hearts those who have answered the knock on the door, accepted the flag folded with precision, said their final farewell, and borne the absence of their fallen hero. Gold Star Families deserve our utmost respect, admiration, and support for their tenacity and resilience, and for the work they do to preserve the memory of those who gave their lives to our Nation.

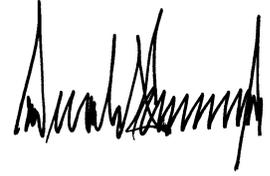
The true strength and success of our Armed Forces is found in the love, support, and unity of our Nation's military families, and this is reflected best in our country's inspirational Gold Star Mothers and Families. Shouldering their profound grief, they find the courage and conviction to move forward, transforming their heartache into hope, meaningful service, and outreach to veterans, support organizations, and other military families coping with the death of a loved one. Their ability to overcome, persist, prevail, and in turn, enrich the lives of others, exemplifies the true American Spirit. On behalf of our grateful Nation, I commend and honor them for their continued commitment to our military heroes.

Americans of every generation owe a debt of gratitude to the men and women who gave their lives in service to this Nation and to their families who remain forever changed. On this solemn day of remembrance, we hold these families in our hearts, remember them in our prayers, support them in our words and deeds, and join them in honoring their hero's ultimate sacrifice. May God provide them continued strength, comfort, and care, and may God bless the United States of America.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895 as amended), has designated the last Sunday in September as "Gold Star Mother's Day."

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Sunday, September 27, 2020, as Gold Star Mother's and Family's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this special day. I also encourage the American people to display the flag and hold appropriate ceremonies as a public expression of our Nation's gratitude and respect for our Gold Star Mothers and Families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.

A handwritten signature in black ink, appearing to be "Donald Trump", located on the right side of the page.

Rules and Regulations

Federal Register

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Wednesday, September 30, 2020

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

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ENVIRONMENTAL PROTECTION AGENCY

2 CFR Part 1500

[EPA-HQ OMS-2020-0018; 10010-32-OMS]

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comment.

SUMMARY: This regulatory action revises certain provisions of Environmental Protection Agency (EPA) financial assistance regulations to provide more flexibility to recipients of Environmental Protection Agency (EPA) financial assistance and streamline dispute procedures for applicants and recipients of EPA financial assistance. The revisions to this rule are exempt from the notice and comment requirements of the Administrative Procedure Act (APA) because it is a matter relating to agency management concerning grants.

DATES: *Effective date:* This interim final rule is effective November 12, 2020.

Applicability date: This interim final rule applies to EPA financial assistance agreements awarded or amended to add funds on or after or disputes arising from agency decisions issued on or after November 12, 2020. Disputes arising from agency decisions issued prior to the effective date of this rule will remain subject to the procedures in the prior regulations.

Comment date: Comments must be received on or before November 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. OMS-2020-0018 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- *Email:* Docket_OMS@epa.gov.

- *Mail:* OMS Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>. Such deliveries are only accepted during the Docket's normal hours of operation: 8:30 a.m. to 4:30 p.m., and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OMS-2020-0018.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Docket ID No. OMS-2020-0018, OMS Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OMS Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Alexandra Raver at raver.alexandra@epa.gov or (202) 564-5296.

SUPPLEMENTARY INFORMATION: EPA's revisions to 2 CFR part 1500 are summarized below.

1. EPA will add a provision at 2 CFR 1500.1(a) clarifying that allowable participant support costs under 2 CFR 200.1, *Participant support costs*, may include rebates or other subsidies provided to program participants or program beneficiaries when authorized by the statutory authority for the financial assistance program. The provision applies to subsidies used for purchase and installation of commercially available, standard ("off the shelf") pollution control equipment or low emission vehicles under the Diesel Emission Reduction Act program or other programs when the program participant rather than the recipient owns the equipment. Other examples of these other EPA funded programs specified in EPA's Interim Guidance on Participant Support Costs include subsidies or rebates provided to program beneficiaries to encourage participation in statutorily authorized programs to encourage environmental stewardship such as Best Management Practices under Clean Water Act 319 nonpoint source management programs, subsidies to promote adoption of source reduction practices by businesses under section 6605 of the Pollution Prevention Act, and rebates or subsidies for wood stove replacement under financial assistance programs authorized by the Clean Air Act or EPA's annual appropriation acts.

2. EPA has added a new provision at 2 CFR 1500.3(b) stating that subrecipient monitoring and

management requirements at 2 *CFR* 200.331 through 200.333 do not apply to transactions entered into with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants. This revision is consistent with the Administration's emphasis, as described in the President's Management Agenda, Cross-Agency Priority Goal on Results Oriented Accountability for Grants, on risk-based approaches to streamlining requirements for recipients whose performance record warrants burden reduction and the importance of deference to states. CWSRF and DWSRF programs are mature Federal grant programs with comprehensive program specific regulations and capitalization grants are administered by state agencies with well-established processes for managing loans and monitoring borrower compliance with loan agreements. This regulatory change will allow states to follow their own procedures rather than those mandated by 2 *CFR* 200.331 through 200.333. Requirements for reporting subaward and executive compensation in 2 *CFR* part 170 and internal controls described at 2 *CFR* 200.303 will continue to apply to CWSRF and DWSRF program grant recipients and borrowers. Recipients of Brownfields Revolving Loan Fund capitalization grants and their borrowers as well other EPA revolving loan fund (RLF) capitalization grant programs remain subject to 2 *CFR* 200.331 through 200.333 and other applicable regulations. Eligibility for these grants is not necessarily limited to states.

3. EPA has revised 2 *CFR* 1500.7 to provide that recipients may add all program income to their EPA funds for use under the purposes and conditions of the assistance agreement even if program income exceeds the amount anticipated at time of award. The revision will allow recipients to deduct the cost of generating program income from gross program income to determine net program income provided these costs have not been charged to any Federal award or the terms of the agreement do not preclude deducting the cost of generating program income. EPA has extended the policy of allowing recipients of RLF capitalization grants to draw down funds from EPA prior to using program income to all RLF programs except the CWSRF and DWSRF programs, which have their own regulations.

4. EPA has revised 2 *CFR* 1500.9 to clarify the scope of the limitation on the allowability of costs for individual consultant fees on EPA assistance

agreements to be consistent with the policy EPA announced in 69 FR 18380 (April 7, 2004). Additionally, the regulation specifies that borrowers under EPA assistance programs for capitalization of revolving loan funds are not subject to the limitation on consultant fee costs.

5. EPA has revised the 2 *CFR* part 1500, subpart E, disputes procedures to exempt the following decisions from the procedures.

a. Decisions to decline to fund non-competitive applications and not to award incremental or supplemental funding based on the availability of funds or agency priorities.

b. Decisions on requests for reconsideration of Specific conditions under 2 *CFR* 200.208.

c. Decisions to deny requests for no-cost extensions under 2 *CFR* 200.308(e)(2), 40 *CFR* 35.114(b), and 40 *CFR* 35.514(b).

d. Denials of requests for EPA approval of procurement through noncompetitive proposals under 2 *CFR* 200.320(c)(4).

EPA has also eliminated reviews of Dispute Decision Official (DDO) decisions by the Director of the Office of Grants and Debarment or Regional Administrators as currently provided for in 2 *CFR* 1500.17 through 1500.19. These reviews will be replaced by a procedure that allows applicants and recipients to petition the DDO to reconsider adverse dispute decisions on an expedited basis. Regional Administrators may act as DDOs or designate another official to be the DDO.

In addition to the above described substantive revisions, EPA will renumber the sections in 2 *CFR* part 1500 to reflect the addition of a new § 1500.1.

I. General Information

A. Affected Entities

Entities affected by this action are those that apply for and/or receive Federal financial assistance (grants, cooperative agreements or fellowships) from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.

II. Background

On December 19, 2014 (79 FR 76050–76054) EPA promulgated 2 *CFR* part 1500, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. These regulations supplement OMB's 2 *CFR* part 200 regulations covering the same subjects which were promulgated that same day (79 FR 75871). EPA's experience in administering these

regulations indicates that applicants and recipients would benefit from clarity regarding EPA's interpretation of these regulations as well as additional flexibility. Further, EPA believes the process for disputing adverse actions the EPA takes against applicants or recipients could be streamlined without compromising fairness. The revisions to 2 *CFR* part 1500 that EPA is making on an interim final basis achieve these objectives. The rule will become final without further revision if no changes are warranted based on comments EPA receives.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not subject to Executive Order 13771 because it is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12886.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 2 *CFR* parts 200 and 1500 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2030–0020. The OMB control numbers for EPA's regulations in 40 *CFR* are listed in 40 *CFR* part 9.

D. Regulatory Flexibility Act

This interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because this rule pertains to grants, which the APA expressly exempts from notice and comment rulemaking requirements. 5 U.S.C. 553(a)(2).

E. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action affects all applicants and recipients of EPA financial Federal assistance and therefore no one entity type will be impacted disproportionately or significantly.

F. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action affects all applicants and recipients of EPA financial Federal assistance and therefore no one entity type will be impacted disproportionately. Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action affects all applicants and recipients of EPA financial Federal assistance and therefore no one entity type will be impacted disproportionately. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials on these changes.

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

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866.

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 it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action does not involve technical standards.

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

The EPA believes that it is not practicable to determine whether this action has disproportionately high and adverse effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 2 CFR Part 1500

Accounting, Grant programs, Grants administration, Loan programs, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 2 CFR part 1500 as follows:

PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 1500 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 136 *et seq.*, 15 U.S.C. 2601 *et seq.*, 20 U.S.C. 4011 *et seq.*, 33 U.S.C. 1251 *et seq.*, and 1401 *et seq.*, 42 U.S.C. 241, 242b, 243, 246, 300f *et seq.*, 1857 *et seq.*, 6901 *et seq.*, 7401 *et seq.*, and 9601 *et seq.*; 2 CFR part 200.

§§ 1500.17 through 1500.19 [Removed]

■ 2. Remove §§ 1500.17 through 1500.19.

§§ 1500.1 through 1500.16 [Redesignated as §§ 1500.2 through 1500.17]

■ 3. Redesignate §§ 1500.1 through 1500.16 as §§ 1500.2 through 1500.17.
■ 4. Add subpart A to read as follows:

Subpart A—Acronyms and Definitions**§ 1500.1 Definitions.**

(a) *Participant support costs.* The Environmental Protection Agency (EPA) has supplemented 2 CFR 200.1, *Participant support costs*, to provide that allowable participant support costs under EPA assistance agreements include:

(1) Rebates or other subsidies provided to program participants for purchases and installations of commercially available, standard (“off the shelf”) pollution control equipment or low emission vehicles under the Diesel Emission Reduction Act program or programs authorized by EPA appropriation acts and permitted by terms specified in EPA assistance agreements or guidance, when the program participant rather than the recipient owns the equipment.

(2) Subsidies, rebates, and other payments provided to program beneficiaries to encourage participation in statutorily authorized programs to encourage environmental stewardship and enable the public to participate in EPA funded research, pollution abatement, and other projects or programs to the extent permitted by statutes and terms specified in EPA assistance agreements or guidance.

(b) [Reserved]
■ 5. Revise newly redesignated § 1500.3 to read as follows:

§ 1500.3 Applicability.

(a) Uniform administrative requirements and cost principles (subparts A through E of 2 CFR part 200 as supplemented by this part) apply to foreign public entities or foreign

organizations, except where EPA determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(b) Requirements for subrecipient monitoring and management at 2 CFR 200.331 through 200.333 do not apply to loan, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or local government debt or similar transactions with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants. Requirements for reporting subaward and executive compensation in 2 CFR part 170 and internal controls described at 2 CFR 200.303 continue to apply to CWSRF and DWSRF grant recipients and borrowers.

■ 6. Revise newly redesignated § 1500.8 to read as follows:

§ 1500.8 Program income.

(a) *Governmental revenues.* Permit fees are governmental revenue and not program income. (See 2 CFR 200.307(c)).

(b) *Use of program income.* The default use of program income for EPA awards is addition even if the amount of program income the non-Federal entity generates exceeds the anticipated amount at time of the award of the assistance agreement. Unless the terms of the agreement provide otherwise, recipients may deduct costs incidental to the generation of program income from gross income to determine program income, provided these costs have not been charged to any Federal award. (See 2 CFR 200.307(b)). The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2)).

(c) *Brownfields Revolving Loan.* To continue the mission of the Brownfields Revolving Loan fund, recipients may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their respective closeout agreements.

(d) *Other revolving loan programs.* Recipients of EPA funding for other revolving loan fund programs may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate

the revolving loan fund or some other authorized purpose as outlined in their closeout agreement. This paragraph (d) does not apply to EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs which are subject to their own regulations.

■ 7. Revise newly redesignated § 1500.10 to read as follows:

§ 1500.10 General procurement standards.

(a) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients, and their contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (These non-Federal entities may, however, pay consultants more than this amount with non-EPA funds.) The limitation in this paragraph (a) applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.

(b) All contracts between recipients and subrecipients and individual consultants are subject to the procurement standards in subpart D of 2 CFR part 200. Contracts or subcontracts with multi-employee firms for consulting services are not affected by the limitation in paragraph (a) of this section provided the contractor or subcontractor rather than the recipient or subrecipient selects, directs and controls individual employees providing consulting services.

(c) Borrowers under EPA revolving loan fund capitalization grant programs are not subject to paragraphs (a) and (b) of this section.

■ 8. Amend newly redesignated § 1500.13 by:

- a. Revising paragraphs (a) introductory text, (a)(1), (c) introductory text, and (c)(1);
- b. Adding a semicolon at the end of paragraph (c)(2);
- c. Removing the word "and" at the end of paragraph (c)(4);
- d. Removing the period at the end of paragraph (c)(5) and adding a semicolon in its place; and
- e. Adding paragraphs (c)(6) through (9).

The revisions and additions read as follows:

§ 1500.13 Purpose and scope of this subpart.

(a) This section provides the process for the resolution of pre-award and post-

award assistance agreement disputes as described in § 1500.14, except for:

(1) Assistance agreement competition-related disputes which are covered by EPA's Grant Competition Dispute Resolution Procedures; and,

* * * * *

(c) Determinations affecting assistance agreements made under certain Agency decision-making processes are not subject to review under the procedures in this subpart or the Agency's procedures for resolving assistance agreement competition-related disputes. These determinations include, but are not limited to:

(1) Decisions on requests for exceptions under § 1500.4;

* * * * *

(6) Decisions to decline to fund non-competitive applications or not to award incremental or supplemental funding based on the availability of funds or agency priorities;

(7) Decisions on requests for reconsideration of specific award conditions under 2 CFR 200.208;

(8) Decisions to deny requests for no-cost extensions under 2 CFR 200.308(e)(2), 40 CFR 35.114(b), and 40 CFR 35.514(b); and

(9) Denials of requests for EPA approval of procurement through noncompetitive proposals under 2 CFR 200.320(c)(4).

■ 9. Amend newly redesignated § 1500.14 by revising paragraphs (c) through (e) to read as follows:

§ 1500.14 Definitions.

* * * * *

(c) *Agency Decision* is the agency's initial pre-award or post-award assistance agreement determination that may be disputed in accordance with this subpart. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights and identifies the Dispute Decision Official (DDO). An Agency Decision based on audit findings serves as EPA's *Management decision* as defined in 2 CFR part 200.1.

(d) *Dispute* is a disagreement by an Affected Entity with a specific Agency Decision submitted to the DDO in accordance with this subpart.

(e) *Dispute Decision Official (DDO)* is the designated agency official responsible for issuing a decision resolving a Dispute.

(1) The DDO for a Headquarters Dispute is the Director of the Grants and Interagency Agreement Management Division in the Office of Grants and Debarment or designee. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Headquarters DDO.

(2) The DDO for a Regional Assistance Agreement Dispute is the Regional Administrator or the official designated by the Regional Administrator to issue the written decision resolving the Dispute. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO.

* * * * *

■ 10. Revise newly redesignated § 1500.15 to read as follows:

§ 1500.15 Submission of Dispute.

An Affected Entity or its authorized representative may dispute an Agency Decision by electronically submitting a Dispute to the DDO identified in the Agency Decision. In order for the DDO to consider the Dispute, it must satisfy the following requirements:

(a) *Timeliness.* The DDO must receive the Dispute no later than 30 calendar days from the date the Agency Decision is electronically sent to the Affected Entity. The DDO will dismiss any Dispute received after the 30-day period unless the DDO grants an extension of time to submit the Dispute. The Affected Entity must submit a written request for extension to the DDO before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation, which may include the unusual complexity of the Dispute or because of exigent circumstances.

(b) *Method of submission.* The Affected Entity must submit the Dispute electronically via email to the DDO, with a copy to the AO, using the email addresses specified in the Agency Decision within the 30-day period stated in paragraph (a) of this section.

(c) *Contents of Dispute.* The Dispute submitted to the DDO must include:

- (1) A copy of the disputed Agency Decision;
- (2) A detailed statement of the specific legal and factual grounds for the Dispute, including copies of any supporting documents;
- (3) The specific remedy or relief the Affected Entity seeks under the Dispute; and
- (4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Dispute.

■ 11. Revise newly redesignated § 1500.16 to read as follows:

§ 1500.16 Notice of receipt of Dispute to Affected Entity.

Within 15 calendar days of receiving the Dispute, the DDO will provide the Affected Entity a written notice, sent electronically, acknowledging receipt of the Dispute.

(a) *Timely Disputes.* If the Dispute was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Dispute. The notice should provide no more than 30 calendar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to issuance of the Dispute decision.

(b) *Untimely Disputes.* If the DDO did not receive the Dispute within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Dispute is being dismissed as untimely and the Agency Decision of the AO becomes final. The dismissal of an untimely Dispute constitutes the final agency action. In appropriate circumstances, the DDO may, as a matter of discretion, consider an untimely Dispute if doing so would be in the interests of fairness and equity.

■ 12. Revise newly redesignated § 1500.17 to read as follows:

§ 1500.17 Determination of Dispute.

(a) In determining the merits of the Dispute, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Dispute, any additional documentation submitted by the Affected Entity in response to the DDO's request under § 1500.16(a), and any other information the DDO determines is relevant to the Dispute provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents except in the support of a request for reconsideration under paragraph (c) of this section.

(b) The DDO will issue the Dispute decision within 180 calendar days from the date the Dispute is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180-day period and if feasible will indicate when the decision is expected to be issued. The DDO will issue the Dispute decision electronically and advise the Affected Entity of procedures for requesting reconsideration. The DDO's decision will constitute the final agency action unless the Affected Entity electronically petitions the DDO for reconsideration within 15 calendar days of issuance of the DDO Decision. The Affected Entity must include a detailed statement of the

factual and legal grounds warranting reversal or modification of the DDO decision. In addition, the Affected Entity may submit additional documents that were not previously provided to the DDO.

(c) If a petition for reconsideration is submitted, the DDO's will advise the Affected Entity within 15 calendar days of receipt of the petition whether the DDO Decision will be reconsidered. The DDO will issue this determination electronically. DDO's will only grant a reconsideration petition if the Affected Entity provides relevant and material evidence that was not available to the Affected Entity at the time the Dispute was submitted or to correct a clear and prejudicial error of fact or law. Denial of a petition for reconsideration constitutes final agency action and the DDO will advise the Affected Entity of the reasons for denying the reconsideration in writing.

(d) If the DDO grants a reconsideration petition, the DDO will issue a revised DDO Decision within 30 calendar days of acceptance of the reconsideration petition unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will issue the revised DDO Decision electronically. The revised DDO Decision and any new material considered by the DDO in making the revised DDO Decision will become part of the record of the Dispute. The revised DDO Decision will constitute final agency action.

(e) The DDO may consider untimely filed reconsideration petitions only if necessary, to correct a DDO Decision that is manifestly unfair and inequitable in light of relevant and material evidence that the Affected Entity could not have discovered during the 30-day period for petitioning for reconsideration. This evidence must be submitted within six months of the date of the DDO Decision. The DDO will advise the Affected Entity within 30 days of receipt of an untimely filed reconsideration petition whether the DDO will accept the petition. Denial of an untimely filed reconsideration petition constitutes final agency action.

[FR Doc. 2020-16894 Filed 9-29-20; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**5 CFR Parts 1600 and 1650****Automatic Enrollment Program; Correction**

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule; correction.

SUMMARY: The Federal Retirement Thrift Investment Board (“FRTIB”) published a final rule in the **Federal Register** on September 16, 2020 concerning changes to the automatic enrollment percentage and a clarification regarding installment payments calculated based on life expectancy. This document contained effective dates for the changes but not for the rule itself.

FOR FURTHER INFORMATION CONTACT: Austen Townsend, (202) 864–8647.

SUPPLEMENTARY INFORMATION:

Correction: In the **Federal Register** of September 16, 2020, in FR Doc. 20–17811, on page 57665, in the first column, correct the **DATES** caption to read:

DATES: This rule is effective September 30, 2020. The change to the automatic enrollment percentage is effective October 1, 2020, for participants who are automatically enrolled in the TSP on or after that date, and January 1, 2021, for BRS participants who are automatically re-enrolled in the TSP on or after that date. The clarification regarding installment payments calculated based on life expectancy is effective immediately.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–21183 Filed 9–29–20; 8:45 am]

BILLING CODE 6760–01–P

NUCLEAR REGULATORY COMMISSION**10 CFR Part 20**

[NRC–2018–0155]

Instructions for Completing NRC’s Uniform Low-Level Radioactive Waste Manifest

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; clarification.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published NUREG/BR–0204, Revision 3, “Instructions for Completing NRC’s Uniform Low-Level Radioactive Waste Manifest,” in June

2020. This document provides instructions to prepare NRC Form 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)), NRC Form 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)), and NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). Use of NUREG/BR–0204, Revision 3 has been delayed. Until further notice, licensees should continue to use NUREG/BR–0204, Revision 2 and the versions of NRC Forms 540, 541 and 542 that were renewed in January 2020, or equivalent, as defined in NRC’s regulations.

DATES: Use of NUREG/BR–0204, Revision 3 has been delayed. Until further notice, licensees should continue to use NRC Forms 540, 541 and 542, which were renewed in January 2020, or equivalent, as defined in NRC’s regulations.

ADDRESSES: Please refer to Docket ID NRC–2018–0155 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2018–0155. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

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

- *NRC’s Form Library:* NRC Forms 540, 541, and 542 can be accessed on the NRC Form Library at <https://www.nrc.gov/reading-rm/doc-collections/forms/>.

FOR FURTHER INFORMATION CONTACT:

Lloyd Desotell, telephone: 301–415–5969, email: Lloyd.Desotell@nrc.gov and Karen Pinkston, telephone: 301–415–3650, email: Karen.Pinkston@nrc.gov.

Both are staff of the Office of Nuclear Material Safety and Safeguards at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: NUREG/BR–0204, Rev. 3, “Instructions for Completing the NRC’s Uniform Low-Level Radioactive Waste Manifest,” provides guidance on completing NRC Forms 540, 541, and 542 (*i.e.*, the NRC’s Uniform Low-Level Waste Manifest) as required by part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix G. The NRC has revised NUREG/BR–0204 and NRC Forms 540, 541, and 542 to address stakeholder feedback since the publication of Revision 2 of the NUREG/BR (ADAMS Accession No. ML071870172). The final NUREG/BR–0204, Rev. 3 and the NRC’s comment resolutions are available in ADAMS under Accession Nos. ML20178A433 and ML19214A186, respectively. Following several requests to delay implementation of NUREG/BR–0204, Rev. 3, the NRC is postponing implementation of NUREG/BR–0204, Revision 3 until further notice.

Revision 2 of NUREG/BR–0204 provides guidance for completing NRC Forms 540, 541, and 542. Note, the definitions section 10 CFR part 20, appendix G, states that “Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information.” Until further notice licensees should continue to use the version of NRC Forms 540, 541 and 542 that were renewed in January 2020, or equivalent, as defined in NRC’s regulations.

Dated: September 25, 2020.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–21625 Filed 9–29–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 3**

[Docket ID OCC–2020–0010]

RIN 1557–AE82

FEDERAL RESERVE SYSTEM**12 CFR Part 217**

[Regulation Q; Docket No. R–1708]

RIN 7100–AF82

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 324**

RIN 3064–AF42

Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule that delays the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016–13, *Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments* (CECL). The final rule provides banking organizations that implement CECL during the 2020 calendar year the option to delay for two years an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, followed by a three-year transition period. The agencies are providing this relief to allow these banking organizations to better focus on supporting lending to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of the coronavirus disease 2019, while also maintaining the quality of regulatory capital. This final rule is consistent with the interim final rule published in the **Federal Register** on March 31, 2020, with certain clarifications and minor adjustments in response to public comments related to

the mechanics of the transition and the eligibility criteria for applying the transition.

DATES: The final rule is effective September 30, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Jung Sup Kim, Capital and Regulatory Policy, (202) 649–6528; or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490, or for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan C. Climent, Assistant Director, (202) 872–7526; Andrew Willis, Lead Financial Institution Policy Analyst, (202) 912–4323; or Michael Ofori-Kuragu, Senior Financial Institution Policy Analyst II, (202) 475–6623, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; David W. Alexander, Senior Counsel, (202) 452–2877; or Jonah Kind, Senior Attorney, (202) 452–2045, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, bbean@fdic.gov; Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Noah Cuttler, Senior Policy Analyst, ncuttler@fdic.gov; Andrew Carayiannis, Senior Policy Analyst, acarayiannis@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, mphillips@fdic.gov; Catherine Wood, Counsel, cawood@fdic.gov; Francis Kuo, Counsel, fkuo@fdic.gov; Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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 - G. Unfunded Mandates Reform Act

I. Background

In 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016–13, *Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments*.¹ The update resulted in significant changes to credit loss accounting under U.S. generally accepted accounting principles (GAAP). The revisions to credit loss accounting under GAAP included the introduction of the current expected credit losses methodology (CECL), which replaces the incurred loss methodology for financial assets measured at amortized cost. For these assets, CECL requires banking organizations² to recognize lifetime expected credit losses and to incorporate reasonable and supportable forecasts in developing the estimate of lifetime expected credit losses, while also maintaining the current requirement that banking organizations consider past events and current conditions.

On February 14, 2019, 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) issued a final rule that revised certain regulations to account for the aforementioned changes to credit loss accounting under GAAP, including CECL (2019 CECL rule).³ The

¹ ASU 2016–13 covers measurement of credit losses on financial instruments and includes three subtopics within Topic 326: (i) Subtopic 326–10 Financial Instruments—Credit Losses—Overall; (ii) Subtopic 326–20: Financial Instruments—Credit Losses—Measured at Amortized Cost; and (iii) Subtopic 326–30: Financial Instruments—Credit Losses—Available-for-Sale Debt Securities.

² Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

³ 84 FR 4222 (February 14, 2019).

2019 CECL rule revised the agencies' regulatory capital rule (capital rule),⁴ stress testing rules, and regulatory disclosure requirements to reflect CECL, and made conforming amendments to other regulations that reference credit loss allowances. The 2019 CECL rule applies to banking organizations that file regulatory reports for which the accounting principles are uniform and consistent with GAAP,⁵ including banking organizations that are subject to the capital rule or stress testing requirements.

The 2019 CECL rule also includes a transition provision that allows banking organizations to phase in over a three-year period the day-one adverse effects of CECL on their regulatory capital ratios. The agencies intend for the transition provision to address concerns that despite adequate capital planning, unexpected economic conditions at the time of CECL adoption could result in higher-than-anticipated increases in allowances. This increase in allowances is expected largely because CECL requires banking organizations to consider current and reasonable and supportable forecasts of future economic conditions to estimate credit loss allowances.

On March 31, 2020, as part of efforts to address the disruption of economic activity in the United States caused by the spread of coronavirus disease 2019 (COVID-19), the agencies adopted a second CECL transition provision through an interim final rule.⁶ This transition provision provides banking organizations that were required to adopt CECL for purposes of GAAP (as in effect January 1, 2020), for a fiscal year that begins during the 2020 calendar year, the option to delay for up to two years an estimate of CECL's effect on regulatory capital, followed by a three-year transition period (*i.e.*, a five-year transition period in total). The agencies provided this relief in response to the additional operational challenges and resource burden of implementing CECL amid the uncertainty caused by recent strains on the U.S. economy so that adopting banking organizations may better focus on supporting lending to creditworthy households and

businesses, while maintaining the quality of regulatory capital and reducing the potential for competitive inequities across banking organizations.

Under the interim final rule, an eligible banking organization would make an election to use the 2020 CECL transition provision in its first Consolidated Reports of Condition and Income (Call Report) or Consolidated Financial Statements for Holding Companies (FR Y-9C) filed during the 2020 calendar year after it meets the eligibility requirements. The interim final rule provides electing banking organizations with a methodology for delaying the effect on regulatory capital of an estimated increase in the allowances for credit losses (ACL) that can be attributed to the adoption of CECL, relative to an estimated increase in the allowance for loan and lease losses (ALLL) that would occur for banking organizations operating under the incurred loss methodology. The interim final rule does not replace the three-year transition provision in the 2019 CECL rule, which remains available to any banking organization at the time that it adopts CECL. Banking organizations that were required to adopt CECL during the 2020 calendar year have the option to elect the three-year transition provision contained in the 2019 CECL rule or the 2020 CECL transition provision contained in the interim final rule, beginning with the March 31, 2020, Call Report or FR Y-9C.

II. Summary of Comments to the Interim Final Rule

The agencies received six public comments on the interim final rule from banking organizations and interest groups. Commenters supported the objectives of the interim final rule because it provides banking organizations additional flexibility to lend to creditworthy borrowers in the current economic environment, without imposing undue regulatory burden. However, several commenters suggested that the regulatory capital relief provided in the interim final rule is insufficient, especially given the current economic downturn. Some of these commenters asserted either that banking organizations should be permitted to add back a larger proportion of the ACL (temporarily or permanently) to common equity tier 1 capital or that the methodology for calculating the add-back should address certain commenters' concerns regarding pro-cyclicality and differences in credit portfolios. One commenter asked the FASB and the agencies to allow banking organizations of all sizes the option to

defer the implementation of CECL until 2025, given current economic uncertainties. This commenter asserted that without a longer delay, community banking organizations may need to maintain loan portfolios with a credit profile that minimizes the regulatory capital volatility caused by CECL, rather than loan portfolios that meet the credit needs of the community. One commenter suggested that the agencies reevaluate whether to increase the amount of ACL includable in tier 2 capital on a permanent basis to address the commenter's concerns regarding pro-cyclicality and CECL.

III. The Final Rule

The final rule is consistent with the interim final rule with some clarifications and adjustments related to the calculation of the transitions and the eligibility criteria for using the 2020 CECL transition provision, as discussed below.

A. Approximating the Impact of CECL

As discussed in the Supplementary Information to the interim final rule, the agencies considered different ways for determining the portion of credit loss allowances attributable to CECL that is eligible for transitional regulatory capital relief. To best capture the effects of CECL on regulatory capital, it would be necessary for a banking organization to calculate the effect on retained earnings of measuring credit loss allowances using both the incurred loss methodology and CECL. This approach, however, would require a banking organization to maintain the equivalent of two separate loss-provisioning processes. For many banking organizations that have adopted CECL, it would be burdensome to track credit loss allowances under both CECL and the incurred loss methodology, due to significant CECL-related changes already incorporated in internal systems or third-party vendor systems in place of elements of the incurred loss methodology. Further, if banking organizations were to maintain separate loss provisioning processes, there would also be burden associated with having to subject the incurred loss methodology to internal controls and supervisory oversight, which may in some respects differ from the controls and oversight over CECL. One commenter agreed that maintaining separate ongoing calculations of loan losses under two processes would entail significant burden.

To address concerns regarding burden and to promote a consistent approach across electing banking organizations, the interim final rule provided a

⁴ 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

⁵ See 12 U.S.C. 1831n; See also current versions of the following: Instructions for Preparation of Consolidated Financial Statements for Holding Companies, Reporting Form FR Y-9C; Instructions for Preparation of Consolidated Reports of Condition and Income, Reporting Forms FFIEC 031 and FFIEC 041; Instructions for Preparation of Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than \$1 Billion, Reporting Form FFIEC 051.

⁶ 85 FR 17723 (March 31, 2020).

uniform approach for estimating the effect of CECL during the first two years of the five-year transition period. Specifically, the interim final rule introduced a 25 percent scaling factor that approximates the average after-tax provision for credit losses attributable to CECL, relative to the incurred loss methodology, in a given reporting quarter.

Some commenters asserted that the 25 percent scaling factor was too low and that it was based on forecasts of benign economic conditions that existed at the beginning of 2020. Further, some commenters stated that the scaling factor could lead to disparate impacts on the availability of credit to different types of borrowers. These commenters suggested that a 100 percent add-back of incremental CECL allowances to regulatory capital would be appropriate for the duration of the transition period or until a longer-term solution is developed by the agencies for addressing potential unintended consequences of CECL on regulatory capital requirements. Other commenters stated that the regulatory capital relief provided through the interim final rule should be permanent to acknowledge the fundamental changes that CECL has introduced to credit loss allowance practices, to avoid the need for the agencies to intervene each time the economy contracts, and to promote credit availability in all economic conditions.

The agencies also received several comments on the precision of the 25 percent scaling factor. One commenter supported the interim final rule's uniform scaling approach because it does not require banking organizations to calculate provisions under both the CECL and incurred loss methodologies, noting that such a requirement would have been labor-intensive and costly. Another commenter supported the objective of the agencies to make the regulatory capital impact of near-term accounting for credit losses under CECL through the crisis roughly comparable to the regulatory capital impact under the incurred loss methodology. However, this commenter asserted that a dynamic scaling factor that increases over time to 50 percent and then reduces to zero percent over a nine quarter period would achieve this objective more effectively and accurately.

After considering these comments, the agencies have decided to retain the 25 percent scaling factor provided in the interim final rule. In developing an approach for adding back an amount of ACL measured under CECL to regulatory capital, the agencies have provided a measure of capital relief for

banking organizations while not creating undue burden. In the agencies' view, this approach should also consider the fundamental differences between CECL and the incurred loss methodology. Both CECL and the incurred loss methodology take into account historical credit loss experience and current conditions when estimating credit loss allowances; however, CECL also requires consideration of the effect of reasonable and supportable forecasts on collectability. This naturally causes a difference in the timing of the build-up of allowances. This difference in timing makes it more difficult to calibrate a more precise scaling factor that changes during a transition period because establishing the increases and decreases in the scaling factor that should apply for particular quarters during this period would require the agencies to anticipate the peaks and troughs of the economic crisis. Further, the amount of allowances required under CECL as compared to the incurred loss methodology is affected by the composition of a banking organization's credit exposures subject to CECL. As a result, developing a scaling factor that changes over the course of a transition period could exacerbate inequities among banking organizations whose credit exposures might be weighted toward particular loan types. As noted in the Supplemental Information to the interim final rule, the agencies believe that the 25 percent scaling factor provides a reasonable estimate of the portion of the increase in allowances related to CECL relative to the incurred loss methodology.⁷ In addition, the uniform calibration promotes competitive equity in the current economic environment between electing banking organizations and those banking organizations that have not yet adopted CECL.

B. Mechanics of the 2020 CECL Transition Provision

The Supplementary Information to the interim final rule states that an

⁷ See Loudis, Bert and Ben Ramish. (2019) "CECL and the Credit Cycle." Finance and Economics Discussion Series Working Paper 061. Available at: <https://www.federalreserve.gov/econres/feds/files/2019061pap.pdf> and Covas, Francisco and William Nelson. "Current Expected Credit Loss: Lessons from 2007–2009." (2018) Banking Policy Institute Working Paper. Available at: https://bpi.com/wpcontent/uploads/2018/07/CECL_WP-2.pdf; the agencies reviewed data from public securities filings of various large banking organizations. These organizations reported allowances and provisions under CECL, on a weighted-average basis, approximately 30 percent higher on a pre-tax basis and 25 percent higher on an after-tax basis. The agencies chose a scalar closer to the after-tax median to avoid additional burden involved with making quarterly tax adjustments throughout the transition period.

electing banking organization must calculate transitional amounts for the following items: Retained earnings, temporary difference deferred tax assets (DTAs), and credit loss allowances eligible for inclusion in regulatory capital. For each of these items, the transitional amount is equal to the difference between the electing banking organization's closing balance sheet amount for the fiscal year-end immediately prior to its adoption of CECL (pre-CECL amount) and its balance sheet amount as of the beginning of the fiscal year in which it adopts CECL (post-CECL amount) (*i.e.*, day-one transitional amounts). To calculate the transitional amounts for these items, an electing banking organization must first calculate, as provided in the 2019 CECL rule, the CECL transitional amount, the adjusted allowances for credit losses (AACL) transitional amount, and the DTA transitional amount. The CECL transitional amount is equal to the difference between an electing banking organization's pre-CECL and post-CECL amounts of retained earnings at adoption. The AACL transitional amount is equal to the difference between an electing banking organization's pre-CECL amount of ALLL and its post-CECL amount of AACL at adoption. The DTA transitional amount is the difference between an electing banking organization's pre-CECL amount and post-CECL amount of DTAs at adoption due to temporary differences.

The agencies received several comments from banking organizations requesting clarification about how the day-one changes to the CECL transitional amount, DTA transitional amount, and AACL transitional amount should be calculated when an electing banking organization experiences a day-one increase in retained earnings. To the extent there is a day-one change for these items, an electing banking organization would calculate each transitional amount as a positive or negative number. For example, an electing banking organization with an increase in retained earnings upon adopting CECL would treat this amount as a negative value when calculating its modified CECL transitional amount for purposes of the 2020 CECL transition.⁸

The agencies adopted the 2020 CECL transition provision to mitigate the adverse effect of CECL on regulatory capital based on an estimated difference between allowances under the incurred loss methodology and CECL amid the uncertainty caused by recent strains on

⁸ See 85 FR 29839 (May 19, 2020).

the U.S. economy. To help achieve this goal, the final rule revises the capital rule to clarify that an electing banking organization is not required to apply the transitional amounts in any quarter in which it would not reflect a positive modified CECL transitional amount (*i.e.*, when applying the transition would result in a decrease to retained earnings for regulatory capital).⁹ During quarters in which a banking organization does not calculate a positive modified CECL transitional amount, the electing banking organization would not reflect any of the transitional amounts in its regulatory capital calculations. However, the banking organization subsequently could resume applying the transitional amounts in the remaining quarters of the transition period if the banking organization calculates a positive modified CECL transitional amount during any of those quarters. The agencies are incorporating this clarification in this final rule. The agencies also are adopting as final all other aspects of the interim final rule related to the calculation of the transitional amounts.

Under the final rule, an electing banking organization must adjust several key inputs to regulatory capital for purposes of the 2020 CECL transition, in addition to the day-one transitional amounts. In adjusting regulatory capital inputs, first an electing banking organization must increase retained earnings by a modified CECL transitional amount. The modified CECL transitional amount is adjusted to reflect changes in retained earnings due to CECL that occur during the first two years of the five-year transition period. The change in retained earnings due to CECL is calculated by taking the change in reported AACL relative to the first day of the fiscal year in which CECL was adopted and applying a scaling multiplier of 25 percent during the first two years of the transition period.

Second, an electing banking organization must decrease AACL by the modified AACL transitional amount. The modified AACL transitional amount reflects an estimate of the change in credit loss allowances attributable to CECL that occurs during the first two years of the five-year transition period. This estimated change in credit loss allowances due to CECL is calculated with the same method used for the modified CECL transitional amount.

Two additional regulatory capital inputs—temporary difference DTAs and average total consolidated assets—are also subject to adjustments. Reported average total consolidated assets for purposes of the leverage ratio is increased by the amount of the modified CECL transitional amount, and temporary difference DTAs are decreased by the DTA transitional amount as under the 2019 CECL rule. The agencies received one comment pertaining to the treatment of temporary difference DTAs. This commenter generally supported the approach for calculating the DTA transitional amount, but noted that not applying a dynamic adjustment to the DTA transitional amount during the first eight quarters of the transition could have a material impact on risk-weighted assets for particularly large banking organizations. Because revising the calculation for DTAs in a dynamic fashion, as suggested by commenters, likely would introduce undue complexity into the transition calculation, the final rule retains the calculation of the DTA transitional amount in the interim final rule, without revision.

Consistent with the interim final rule, under the final rule, the modified CECL and modified AACL transitional amounts are calculated on a quarterly basis during the first two years of the transition period. An electing banking organization reflects those modified transitional amounts, which includes 100 percent of the day-one impact of CECL plus a portion of the difference between AACL reported in the most recent regulatory report and AACL as of the beginning of the fiscal year that the banking organization adopts CECL, in transitional amounts applied to regulatory capital calculations. For the reasons described above, an electing banking organization would not apply the transitional amounts in any quarter in which the banking organization would not report a positive modified CECL transitional amount. After two years, the cumulative transitional amounts become fixed and are phased out of regulatory capital. The phase out of the transitional amounts from regulatory capital occurs over the subsequent three-year period: 75 percent are recognized in year three; 50 percent are recognized in year four; and 25 percent are recognized in year five.

Beginning in year six, the banking organization will not be able to adjust its regulatory capital by any of the transitional amounts.

Some commenters requested that the first two years of the transition be applied on a permanent basis. While this aspect of the transition is generally based on the difference between lifetime expected credit losses and incurred credit losses, the agencies adopted the interim final rule to provide burden relief for operational challenges resulting from the implementation of a significant change in credit loss accounting during a shock to the economy caused by the spread of COVID-19, not to permanently recalibrate the capital rule. The agencies intend to propose the final key features of the Basel III reforms related to risk-based capital requirements soon. As part of that implementation, the agencies intend generally to preserve the aggregate level of loss absorbency in the banking system throughout the economic cycle and will consider the effect of CECL in their analysis. The agencies will also continue to monitor the effect of CECL on capital ratios.

Finally, under the final rule, an electing banking organization applies the adjustments calculated above during each quarter of the transition period for purposes of calculating the banking organization's regulatory capital ratios. No adjustments are reflected in balance sheet or income statement amounts. The electing banking organization reflects the transition adjustment to the extent the banking organization has reflected CECL in the Call Report or FR Y-9C, as applicable, in that quarter. If a banking organization chooses to revert to the incurred loss methodology pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)¹⁰ in any quarter in 2020, the banking organization would not apply any transitional amounts in that quarter but would be allowed to apply the transitional amounts in subsequent quarters when the banking organization resumes use of CECL. However, a banking organization that has elected the transition, but subsequently elects to not apply the transitional amounts, in any quarter, would not receive any extension of the five-year transition period.

⁹ See 12 CFR 3.100(d) (OCC); 12 CFR 217.100(d) (Board); 12 CFR 324.100(d) (FDIC).

¹⁰ See Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 4014, 134 Stat.

281 (Mar. 27, 2020). The CARES Act provides banking organizations optional temporary relief from complying with CECL ending on the earlier of (1) the termination date of the current national

emergency, declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) concerning COVID-19, or (2) December 31, 2020.

TABLE 1—CECL TRANSITIONAL AMOUNTS TO APPLY TO REGULATORY CAPITAL COMPONENTS DURING THE FINAL THREE YEARS OF THE 2020 CECL TRANSITION

	Year 3	Year 4	Year 5
Increase retained earnings and average total consolidated assets by the following percentages of the modified CECL transitional amount	75%	50%	25%
Decrease temporary difference DTAs by the following percentages of the DTA transitional amount.			
Decrease AACL by the following percentages of the modified AACL transitional amount.			

C. 2020 CECL Adopters

Consistent with the interim final rule, under the final rule, banking organizations that are required to adopt CECL under GAAP (as in effect January 1, 2020) in the 2020 calendar year are eligible for the 2020 CECL transition provision. A banking organization that is required to adopt CECL under GAAP in the 2020 calendar year, but chooses to delay use of CECL for regulatory reporting in accordance with section 4014 of the CARES Act, is also eligible for the 2020 CECL transition provision.¹¹

Many depository institution holding companies that are Securities and Exchange Commission (SEC) filers are required to adopt CECL for financial statement purposes under GAAP in the 2020 calendar year (in which case they are eligible for the 2020 CECL transition provision). Additionally, since issuing the interim final rule, supervisory experience has shown that depository institution subsidiaries of holding companies generally adopt CECL based on when their holding companies are required to adopt CECL. The agencies received comments through the supervisory process regarding CECL transition implementation challenges that can exist when the depository institution subsidiary of a holding company does not adopt CECL at the same time as its holding company, which would result in maintaining separate processes for calculating loan losses on the same exposure. However, because these depository institution subsidiaries are not required to adopt CECL under GAAP during the 2020 calendar year, they would not have been eligible to use the 2020 CECL transition provision under the interim final rule. Additionally, a banking organization that is not required to adopt CECL under GAAP in the 2020 calendar year, but nonetheless chooses to early adopt CECL in the 2020 calendar year would not have been eligible to use the 2020 CECL transition provision under the interim final rule. Due to the significant

differences between CECL and the incurred loss methodology, the agencies understand that these banking organizations would have incurred substantial time and cost prior to 2020 to implement CECL and it would be a significant burden to subsequently revert to the incurred loss methodology. To address these implementation challenges and facilitate more banking organizations to better focus on supporting lending to creditworthy borrowers, the final rule modifies the interim final rule. Specifically, the final rule permits use of the 2020 CECL transition provision by any banking organization that adopts CECL during the 2020 calendar year, including those not required to adopt CECL under GAAP in the 2020 calendar year and those that adopt CECL in an interim period in the 2020 calendar year. A banking organization that initially elected the three-year transition provision under the 2019 CECL rule earlier in 2020 because it was not eligible to elect the 2020 CECL transition provision under the interim final rule at that time may change its election to the 2020 CECL transition provision in its Call Report or FR Y-9C (as applicable) filed later in the 2020 calendar year. In all cases, an electing banking organization must follow the calculations for determining the transitional amounts as described in the capital rule.

D. Transitions Applicable to Advanced Approaches Banking Organizations

Consistent with the interim final rule, the final rule adjusts the transitional amounts related to eligible credit reserves for advanced approaches banking organizations¹² that elect to use the 2020 CECL transition provision. The final rule also adjusts the transitional

¹² A banking organization is an advanced approaches banking organization if it (1) is a global systemically important bank holding company, (2) is a Category II banking organization, (3) has elected to be an advanced approached banking organization, (4) is a subsidiary of a company that is an advanced approaches banking organization, or (5) has a subsidiary depository institution that is an advanced approaches banking organization. See 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

amounts related to the supplementary leverage ratio's total exposure amount. An advanced approaches banking organization that elects the 2020 CECL transition provision continues to be required to disclose two sets of regulatory capital ratios under the capital rule: One set would reflect the banking organization's capital ratios with the CECL transition provision and the other set would reflect the banking organization's capital ratios on a fully phased-in basis.¹³

E. Other Considerations

The agencies received a few comments on topics not discussed in the interim final rule. One commenter requested that the FASB and the agencies allow banking organizations of all sizes the option to defer the implementation of CECL until 2025, given current economic uncertainties. Other commenters requested that the agencies study further the relationship between regulatory capital and credit loss allowances and whether the impact of CECL on banking organizations' regulatory capital should result in permanent revisions to the capital rule. One commenter requested that the agencies increase the amount of ACL that would be eligible to be added back to tier 2 capital.

The agencies will continue to study the need for further revisions to the regulatory capital framework to account for CECL and take warranted actions as the agencies deem necessary. The agencies will continue to use GAAP as the basis for accounting principles applicable to reports or statements required to be filed with the agencies, consistent with section 37 of the Federal Deposit Insurance Act.¹⁴ The agencies will continue to use the supervisory process to examine credit loss estimates and allowance balances of banking organizations regardless of their election to use CECL transition provisions. In addition, the agencies may assess the capital plans at electing banking organizations for ensuring

¹³ See 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); 12 CFR 324.173 (FDIC).

¹⁴ See 12 U.S.C. 1831n(a)(2)(A).

¹¹ The option to delay the use of CECL in accordance with section 4014 of the CARES Act also is available for other GAAP-based reporting.

sufficient capital at the expiration of such transition periods.¹⁵

F. Technical Amendments to the Interim Final Rule

The agencies are making technical, non-substantive edits in the final rule to correct typographical errors in the interim final rule. Specifically, the amendments correct and clarify certain definitions and terminology used in the 2020 CECL transition provision and remove extraneous language that was inadvertently included in the interim final rule.

IV. Impact Assessment

As discussed in the Supplementary Information to the interim final rule, CECL is expected to affect the timing and magnitude of banking organizations' loss provisioning, particularly around periods of economic stress. As recently as late last year, economic conditions appeared stable and the introduction of CECL was expected to have only a modest effect on operations. However, the additional uncertainty due to the introduction of a new credit loss accounting standard in a period of stress associated with COVID-19 poses a unique and unanticipated challenge to business operations.

The agencies issued the interim final rule to mitigate the extent to which CECL implementation complicates capital planning challenges posed by the economic effects of the COVID-19 pandemic by making the regulatory capital impact of near-term accounting for credit losses under CECL through the crisis roughly comparable to the regulatory capital impact under the incurred loss methodology. To do so, the 2020 CECL transition provision includes the entire day-one impact as well as an estimate of the incremental increase in credit loss allowances attributable to CECL as compared to the

incurred loss methodology. With the 2020 CECL transition provision provided by the interim final rule, as clarified by the final rule, banking organizations have time to adapt capital planning under stress to the new credit loss accounting standard, improving their flexibility and enhancing their ability to serve as a source of credit to the U.S. economy.

The uniform 25 percent scaling factor is only an approximation of the average after-tax provision for credit losses attributable to CECL, relative to the incurred loss methodology, in a given reporting quarter. Banking organizations may realize effects that are higher or lower than the amount calculated using the scaling factor. Additionally, the transition provision does not directly address likely differences in the timing of loss recognition under CECL and the incurred loss methodology. To the extent that allowances related to the economic effects of the COVID-19 pandemic build sooner under CECL than they would have under the incurred loss methodology, the transition provision provided in the final rule will not fully offset the regulatory capital impact of CECL. However, there is a significant benefit to operational simplicity from using a single scalar for the quarterly adjustments for all electing banking organizations.

As discussed previously, any banking organization that chooses to adopt, or is required to adopt CECL during the 2020 calendar year, as well as any banking organization that is part of a consolidated group whose holding company adopts CECL under GAAP during the 2020 calendar year will be covered by the final rule. However, the final rule will only directly affect those institutions that opt to utilize the 2020 CECL transition provision. The choice to adopt the 2020 CECL transition provision will depend on the characteristics of each individual institution, therefore the agencies do not know how many institutions will choose to do so.

As mentioned previously, under the interim final rule and the final rule, banking organizations that are required to adopt CECL under GAAP (as in effect January 1, 2020) in the 2020 calendar year would be eligible for the 2020 CECL transition provision. Under the final rule, the agencies are also permitting use of the 2020 CECL transition provision by any banking organization that is part of a consolidated group in which its holding company is required under GAAP to adopt CECL during the 2020 calendar year. Also, the agencies are expanding

the scope of the 2020 CECL transition provision to include any banking organization that is not required to adopt CECL under GAAP in the 2020 calendar year, but nonetheless chooses to early adopt CECL in the 2020 calendar year, including a banking organization that adopts CECL in an interim period in the 2020 calendar year. The agencies do not have information necessary to estimate the number of institutions that may choose to adopt CECL in the 2020 calendar year and may avail themselves of the 2020 CECL transition provision.

The final rule provides electing banking organizations relief in response to the additional operational challenges and resource burden of implementing CECL amid the uncertainty caused by recent strains on the U.S. economy, so that electing banking organizations may better focus on supporting lending to creditworthy households and businesses, while maintaining the quality of regulatory capital and reducing the potential for competitive inequities across banking organizations. Banking organizations that are eligible for, and opt to utilize the 2020 CECL transition provision may incur some regulatory costs associated with making changes to their systems and processes.

V. Administrative Law Matters

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). 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."

The agencies recognize that the public interest is best served by implementing the final rule as soon as possible. As discussed above, recent events have suddenly and significantly affected global economic activity. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain.

The 2019 CECL rule, as amended by the interim final rule, was adopted by the agencies to address concerns that despite adequate capital planning, uncertainty about the economic environment at the time of CECL

¹⁵ The Board extended the due date for the Y-14A collection of supplemental CECL information from April 6th until May 11th (due date of the March 31 FR Y-9C) and is including changes in the Y-14A instructions to align with the changes outlined in the interim final rule. These changes are effective for the submission associated with the FR Y-14 as of December 31, 2019.

Under the Board's December 2018 amendments to its stress test rules, a banking organization that had adopted CECL in 2020 was required to include the impact of CECL into their stressed projections beginning in the 2020 stress testing cycle. As a result of the interim final rule, firms that have already adopted CECL have the option to either include the adjustments from the interim final rule in their 2020 stress projections or delay doing so. As noted in the 2020 CCAR summary instructions, the Board will not issue supervisory findings on banking organizations' stressed estimates of allowances under CECL until the 2022 CCAR cycle, at the earliest.

adoption could result in higher-than-anticipated increases in credit loss allowances. Because of recent economic dislocations and disruptions in financial markets, banking organizations may face higher-than-anticipated increases in credit loss allowances. The final rule is intended to mitigate some of the uncertainty that comes with the increase in credit loss allowances during a challenging economic environment by temporarily limiting the approximate effects of CECL in regulatory capital. This will allow banking organizations to better focus on supporting lending to creditworthy households and businesses.

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. Because the rule relieves a restriction, the final rule is exempt from the APA's delayed effective date requirement. Additionally, the agencies find good cause to publish the final rule 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.¹⁶ 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.¹⁷

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.¹⁸

For the same reasons set forth above, 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. In light of current market uncertainty, the agencies have determined that delaying the effective date of the 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. However, in connection with the interim final rule, the Board temporarily revised the Financial Statements for Holding Companies (FR Y–9 reports; OMB No. 7100–0128) and the Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341) and invited comment on a proposal to extend those collections of information for three years, with revision. No comments were received regarding this proposal under the PRA. The Board has now extended, with revision, the FR Y–9 and FR Y–14A/Q/M reports as proposed, except for minor clarifications discussed below to align the reporting instructions with this final rule.

Additionally, in connection with the interim final rule, the agencies made revisions to the Call Reports (OCC OMB Control No. 1557–0081; Board OMB Control No. 7100–0036; and FDIC OMB Control No. 3064–0052) and the FFIEC 101 (OCC OMB Control No. 1557–0239; Board OMB Control No. 7100–0319; FDIC OMB Control No. 3064–0159). The final changes to the Call Reports, the FFIEC 101 and their related instructions are addressed in a separate **Federal Register** notice.¹⁹

Current Actions

The Board has extended the FR Y–9C and FR Y–14A/Q/M for three years, with revision, as originally proposed,

except for minor clarifications to the instructions to the reports to accurately reflect the CECL transition provision as modified by this final rule. In addition to the specific changes mentioned in the interim final rule, the final rule expands eligibility for the new transition to banking organizations that voluntarily early adopt CECL in the 2020 calendar year. The final rule also includes minor adjustments to clarify calculation of the transition provision. Specifically, the FR Y–9C instructions would be clarified to note that an electing banking organization that opted to apply the transition in the first quarter in which it was eligible is not required to apply the transition in any quarter in which it would not reflect a positive modified CECL transitional amount (that could result in negative retained earnings). Also, the FR Y–9C instructions would be clarified to note that the day-one transitional amounts (CECL transitional amount, AACL transitional amount, and DTA transitional amount) may be calculated as a positive or negative number. All of the updates to the FR Y–9C and FR Y–14A/Q/M noted in the interim and final rule result in a zero estimated net change in hourly burden.

Revision, With Extension, of the Following Information Collections

(1) *Report Title:* Financial Statements for Holding Companies.

Agency Form Number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB Control Number: 7100–0128.

Effective Date: September 30, 2020

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,²⁰ securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated Number of Respondents: FR Y–9C (non-advanced approaches community bank leverage ratio (CBLR) HCs with less than \$5 billion in total assets): 71; FR Y–9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35; FR Y–9C (non-advanced approaches, non CBLR, HCs with less than \$5 billion in total assets): 84; FR Y–9C (non-advanced approaches, non CBLR HCs, with \$5 billion or more in total assets): 154; FR Y–9C (advanced

²⁰ A savings and loan holding company (SLHC) must file one or more of the FR Y–9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

¹⁶ 5 U.S.C. 801 *et seq.*

¹⁷ 5 U.S.C. 801(a)(3).

¹⁸ 5 U.S.C. 804(2).

¹⁹ See 85 FR 44361 (July 22, 2020).

approaches HCs): 19; FR Y-9LP: 434; FR Y-9SP: 3,960; FR Y-9ES: 83; FR Y-9CS: 236.

Estimated average hours per response:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 29.17 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35.14; FR Y-9C (non-advanced approaches, non CBLR HCs, with less than \$5 billion in total assets): 41.01; FR Y-9C (non-advanced approaches, non CBLR, HCs with \$5 billion or more in total assets): 46.98 hours; FR Y-9C (advanced approaches HCs): 48.80 hours; FR Y-9LP: 5.27 hours; FR Y-9SP: 5.40 hours; FR Y-9ES: 0.50 hours; FR Y-9CS: 0.50 hours.

Recordkeeping

FR Y-9C (non-advanced approaches HCs with less than \$5 billion in total assets), FR Y-9C (non-advanced approaches HCs with \$5 billion or more in total assets), FR Y-9C (advanced approaches HCs), and FR Y-9LP: 1.00 hour; FR Y-9SP, FR Y-9ES, and FR Y-9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 8,284 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 4,920; FR Y-9C (non-advanced approaches non CBLR HCs with less than \$5 billion in total assets): 13,779; FR Y-9C (non-advanced approaches non CBLR HCs with \$5 billion or more in total assets): 28,940 hours; FR Y-9C (advanced approaches HCs): 3,709 hours; FR Y-9LP: 9,149 hours; FR Y-9SP: 42,768 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

Recordkeeping

FR Y-9C: 1,452 hours; FR Y-9LP: 1,736 hours; FR Y-9SP: 3,960 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

General description of report:

The FR Y-9C consists of standardized financial statements similar to the Call Reports filed by banks and savings associations.²¹ The FR Y-9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total

consolidated assets of \$3 billion or more.²²

The FR Y-9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y-9C, as well as by each of its subsidiary HCs.²³ The report consists of standardized financial statements.

The FR Y-9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than \$3 billion. In a banking organization with total consolidated assets of less than \$3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y-9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y-9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y-9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y-9CS is a free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y-9 reports. The data items included on the FR Y-9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the FR Y-9 family of reports on bank holding companies pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)), as amended by sections 369(8) and 604(h)(2) of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act); on U.S. intermediate holding companies pursuant to section 5 of the BHC Act (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. 511(a)(1) and

5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)(A)). The obligation to submit the FR Y-9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y-9CS, which is voluntary.

With respect to the FR Y-9C report, Schedule HI's data item 7(g) "FDIC deposit insurance assessments," Schedule HC P's data item 7(a) "Representation and warranty reserves for 1-4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies," and Schedule HC P's data item 7(b) "Representation and warranty reserves for 1-4 family residential mortgage loans sold to other parties" are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y-9C report, Schedule HC's memorandum item 2.b. and the FR Y-9SP report, Schedule SC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Additionally, items on the FR Y-9C, Schedule HC-C for loans modified under Section 4013, data items Memorandum items 16.a, "Number of Section 4013 loans outstanding"; and Memorandum items 16.b, "Outstanding balance of Section 4013 loans" are considered confidential. While the Board generally makes institution-level FR Y-9C report data publicly available, the Board is collecting Section 4013 loan information as part of condition

²¹ The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than \$5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

²² Under certain circumstances described in the FR Y-9C's General Instructions, HCs with assets under \$3 billion may be required to file the FR Y-9C.

²³ A top-tier HC may submit a separate FR Y-9LP on behalf of each of its lower-tier HCs.

reports for the impacted HCs and the Board considers disclosure of these items at the HC level would not be in the public interest. Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. 552(b)(8). In addition, holding companies may be reluctant to offer modifications under Section 4013 if information on these modifications made by each holding company is publicly available, as analysts, investors, and other users of public FR Y-9C report information may penalize an institution for using the relief provided by the CARES Act. The Board may disclose Section 4013 loan data on an aggregated basis, consistent with confidentiality.

Aside from the data items described above, the remaining data items on the FR Y-9C report and the FR-Y 9SP report are generally not accorded confidential treatment. The data items collected on FR Y-9LP, FR Y-9ES, and FR Y-9CS reports, are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent the instructions to the FR Y-9C, FR Y-9LP, FR Y-9SP, and FR Y-9ES reports each respectively direct the financial institution to retain the work papers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution's work papers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

(2) *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 BHCs, U.S. intermediate holding companies (IHCs), and savings and loan holding

companies (SLHCs)²⁴ (collectively, "holding companies") 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); 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: 34.²⁵

Estimated average hours per response: FR Y-14A: 1,085 hours; FR Y-14Q: 2,142 hours; FR Y-14M: 1,072 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: 39,060 hours; FR Y-14Q: 308,448 hours; FR Y-14M: 437,376 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 annual²⁶ FR Y-14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.²⁷

²⁴ 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 (Nov. 1, 2019).

²⁵ 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.

²⁶ 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.

²⁷ 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-14 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

The quarterly FR Y-14Q collects granular data on various asset classes, including loans, securities, trading positions, and pre-provision net revenue 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 Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (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. Compliance with the information collection is mandatory.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y-14 reports pursuant to section 5(c) of the BHC Act, 12 U.S.C. 1844(c), and pursuant to section 165(i) of the Dodd-Frank Act, 12 U.S.C. 5365(i). The Board has authority to require SLHCs to file the FR Y-14 reports pursuant to section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)). Lastly, the Board has authority to require U.S. IHCs of FBOs to file the FR Y-14 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 U.S.C. 5311(a)(1) and 5365. In addition, section 401(g) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), 12 U.S.C. 5365 note, provides that the Board has the authority to establish enhanced

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-14 forms as part of a separate proposal. See 84 FR 59032, 59063 (Nov. 1, 2019).

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.”²⁸ The FR Y–14 reports are mandatory. The information collected in the FR Y–14 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).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)²⁹ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.³⁰ 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). Since the agencies were not required to issue a general notice of proposed rulemaking associated with this final rule, no RFA is required. Accordingly, the agencies have concluded that the RFA’s requirements relating to 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 (RCRDIA),³¹ 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 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.³² The agencies have determined that the final rule does not impose additional reporting, disclosure, or other requirements on IDIs; therefore, the requirements of the RCDRIA do not apply.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act³³ 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. Unfunded Mandates

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). Since there was no general notice of proposed rulemaking, the OCC has not prepared an economic analysis of the final 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, Banking, 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 interim final rule amending chapter I of title 12 of the Code of Federal Regulations, which was published at 85 FR 17723 on March 31, 2020, and amended at 85 FR 29839 on May 19, 2020, is adopted as final with the following changes:

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.

Subpart G—Transition Provisions

■ 2. Revise § 3.301 to read as follows:

§ 3.301 Current Expected Credit Losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, a national bank or Federal savings organization may elect to use a CECL transition provision pursuant to this section only if the national bank or Federal savings association records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL.

(2) Except as provided in paragraph (d) of this section, a national bank or Federal savings association that elects to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report that includes CECL filed by the national bank or Federal savings association after it adopts CECL.

(3) A national bank or Federal savings association that does not elect to use the CECL transition provision as of the first Call Report that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL

²⁸ 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–14 reports. See 79 FR 17240, 17304 (Mar. 27, 2014).

²⁹ 5 U.S.C. 601 *et seq.*

³⁰ 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 total assets of \$41.5 million or less. See 13 CFR 121.201.

³¹ 12 U.S.C. 4802(a).

³² 12 U.S.C. 4802.

³³ Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which a national bank or Federal savings association adopts CECL and reflects CECL in its first Call Report filed after that date; or, for the 2020 CECL transition provision under paragraph (d) of this section, the five-year period beginning on the earlier of the date a national bank or Federal savings association was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020), or the first day of the fiscal year that begins during the 2020 calendar year in which the national bank or Federal savings association files regulatory reports that include CECL.

(2) *CECL transitional amount* means the difference, net of any DTAs, in the amount of a national bank's or Federal savings association's retained earnings as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's retained earnings as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(3) *DTA transitional amount* means the difference in the amount of a national bank's or Federal savings association's DTAs arising from temporary differences as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a national bank's or Federal savings association's AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL and the amount of the national bank's or Federal savings association's ALLL as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the difference in the amount of a national bank's or Federal savings association's eligible credit reserves as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's

or Federal savings association's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, a national bank or Federal savings association must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this

section, an advanced approaches or Category III national bank or Federal savings association must make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *2020 CECL transition provision.* Notwithstanding paragraph (a) of this section, a national bank or Federal savings association that adopts CECL for accounting purposes under GAAP as of the first day of a fiscal year that begins during the 2020 calendar year may elect to use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition provision calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which a national bank or Federal savings association uses CECL for purposes of its Call Report. A national bank or Federal savings association may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020, and makes the election in the Call Report filed for the same quarter. A national bank or Federal savings association that does not calculate a positive modified CECL transitional amount in any quarter is not required to apply the adjustments in its calculation of regulatory capital ratios in

paragraph (d)(2) of this section in that quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition provision calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) A national bank or Federal savings association that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its

modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its modified AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its modified AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the

fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches or Category III national bank or Federal savings association that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) Eligible credit reserves shortfall.

An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d), and whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount (or modified CECL transitional amount) used in paragraph (c) of this section by the full amount of its DTA transitional amount.

(f) Business combinations.

Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving a national bank or Federal savings association where one or both of the national banks or Federal savings associations have elected the treatment described in this section:

(1) If the acquirer national bank or Federal savings association (as determined under GAAP) elected the treatment described in this section, the acquirer national bank or Federal savings association must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting national bank or Federal savings association.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the preamble, the interim final rule amending chapter II of title 12 of the Code of Federal Regulations, which was published at 85 FR 17723 on March 31, 2020, and amended at 85 FR 29839 on May 19, 2020, is adopted as final with the following changes:

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

■ 3. 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, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

■ 4. Revise § 217.301 to read as follows:

§ 217.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, a Board-regulated institution may elect to use a CECL transition provision pursuant to this section only if the Board-regulated institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL.

(2) Except as provided in paragraph (d) of this section, a Board-regulated institution that elects to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report or FR Y–9C that includes CECL filed by the Board-regulated institution after it adopts CECL.

(3) A Board-regulated institution that does not elect to use the CECL transition provision as of the first Call Report or FR Y–9C that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which a Board-regulated institution adopts CECL and reflects CECL in its first Call Report or FR Y–9C filed after that date; or, for the 2020 CECL transition provision under paragraph (d) of this section, the five-year period beginning on the earlier of the date a Board-regulated institution was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020), or the first day of the fiscal year that begins during the 2020 calendar year in which the Board-regulated institution files regulatory reports that include CECL.

(2) *CECL transitional amount* means the difference net of any DTAs, in the

amount of a Board-regulated institution's retained earnings as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's retained earnings as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(3) *DTA transitional amount* means the difference in the amount of a Board-regulated institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a Board-regulated institution's AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL and the amount of the Board-regulated institution's ALLL as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the difference in the amount of a Board-regulated institution's eligible credit reserves as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, a Board-regulated institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of

DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches or Category III Board-regulated institution must make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period,

decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *2020 CECL transition provision.* Notwithstanding paragraph (a) of this section, a Board-regulated institution that adopts CECL for accounting purposes under GAAP as of the first day of a fiscal year that begins during the 2020 calendar year may elect to use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition provision calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which a Board-regulated institution uses CECL for purposes of its Call Report or FR Y-9C. A Board-regulated institution may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020, and makes the election in the Call Report or FR Y-9C filed for the same quarter. A Board-regulated institution that does not calculate a positive modified CECL transitional amount in any quarter is not required to apply the adjustments in its calculation of regulatory capital ratios in paragraph (d)(2) of this section in that quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition provision calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report or FR Y-9C, and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report or Y-9C at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most

recent Call Report or FR Y-9C, and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report or FR Y-9C at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) A Board-regulated institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one

hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches or Category III Board-regulated institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition

period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.* An advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to § 217.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount used in paragraph (c) of this section (or modified CECL transitional amount used in paragraph (d) of this section) by the full amount of its DTA transitional amount.

(f) *Business combinations.* Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving a Board-regulated institution where one or both Board-regulated institutions have elected the treatment described in this section:

(1) If the acquirer Board-regulated institution (as determined under GAAP) elected the treatment described in this section, the acquirer Board-regulated institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired company (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired company does not transfer to the resulting Board-regulated institution.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the preamble, the interim final rule amending chapter III of title 12 of the Code of Federal Regulations, which was published at 85 FR 17723 on March 31, 2020, and amended at 85 FR 29839 on May 19, 2020, is adopted as final with the following changes:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 is revised 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; section 4014, Pub. L. 116-136, 134 Stat. 281 (15 U.S.C. 9052).

■ 6. Revise § 324.301 to read as follows:

§ 324.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, an FDIC-supervised institution may elect to use a CECL transition provision pursuant to this section only if the FDIC-supervised institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL.

(2) Except as provided in paragraph (d) of this section, an FDIC-supervised institution that elects to use the CECL transition provision must elect to use the CECL transition provision in the

first Call Report that includes CECL filed by the FDIC-supervised institution after it adopts CECL.

(3) An FDIC-supervised institution that does not elect to use the CECL transition provision as of the first Call Report that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period, beginning the first day of the fiscal year in which an FDIC-supervised institution adopts CECL and reflects CECL in its first Call Report filed after that date; or, for the 2020 CECL transition provision under paragraph (d) of this section, the five-year period beginning on the earlier of the date an FDIC-supervised institution was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020), or the first day of the fiscal year that begins during the 2020 calendar year in which the FDIC-supervised institution files regulatory reports that include CECL.

(2) *CECL transitional amount* means the difference, net of any DTAs, in the amount of an FDIC-supervised institution's retained earnings as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's retained earnings as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(3) *DTA transitional amount* means the difference in the amount of an FDIC-supervised institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of an FDIC-supervised institution's AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL and the amount of the FDIC-supervised institution's ALLL as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the difference in the amount of an FDIC-supervised

institution's eligible credit reserves as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, an FDIC-supervised institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional

amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches or Category III FDIC-supervised institution must make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *2020 CECL transition provision.* Notwithstanding paragraph (a) of this section, an FDIC-supervised institution that adopts CECL for accounting purposes under GAAP as of the first day of a fiscal year that begins during the 2020 calendar year may elect to use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition provision calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which an FDIC-supervised institution uses CECL for purposes of its Call Report. An FDIC supervised-institution may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020 and makes the election in the Call Report filed for the same quarter. An FDIC-supervised institution that does not calculate a positive modified CECL transitional amount in any quarter is not required to apply the

adjustments in its calculation of regulatory capital ratios in paragraph (d)(2) of this section in that quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition provision calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report, and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) An FDIC-supervised institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified

CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its modified AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its modified AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-

five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches or Category III FDIC-supervised institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.*

An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the

FDIC pursuant to § 324.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount used in paragraph (c) of this section (or modified CECL transitional amount used in paragraph (d) of this section) by the full amount of its DTA transitional amount.

(f) *Business combinations.*

Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving an FDIC-supervised institution where one or both FDIC-supervised institutions have elected the treatment described in this section:

(1) If the acquirer FDIC-supervised institution (as determined under GAAP) elected the treatment described in this section, the acquirer FDIC-supervised institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting FDIC-supervised institution.

Brian P. Brooks,

Acting Comptroller of the Currency.

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

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about August 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020-19782 Filed 9-29-20; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, and 1306

[Docket No. DEA-322]

RIN 1117-AB20

Implementation of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: On April 6, 2009, the Drug Enforcement Administration published the interim final rule titled “Implementation of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008,” which amended DEA’s regulations by adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. This action adopts the interim final rule as a final rule without change, apart from a minor technical amendment and certain changes to DEA regulations already made by intervening rules. This action also reinstates amendments that were inadvertently removed by the Controlled Substances and List I Chemical Registration and Reregistration Fees final rule published on March 15, 2012.

DATES: This final rule is effective October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, VA 22152; Telephone: (571) 362-3261.

SUPPLEMENTARY INFORMATION:

Outline

- I. Purpose of Regulatory Action
- II. Summary of Key Provisions of the Ryan Haight Act
 - A. In-Person Medical Evaluation
 - B. Requirement of Modified Registration
 - C. Criminal Offenses
- III. The Interim Final Rule and Subsequent Changes to DEA Regulations
- IV. Discussion of Comments
 - A. Distributors’ Responsibilities
 - B. Pharmacies’ Responsibilities
 - C. Exceptions to the Definition of “Online Pharmacy”
 - D. Access to Medication
 - E. Verification of Registration
- V. Section-by-Section Summary of the Final Rule
- VI. Regulatory Analyses

I. Purpose of Regulatory Action

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Pub. L. 110-425) (hereafter, the “Ryan Haight Act” or the “Act”) was enacted on October 15, 2008. The Act amended the Controlled Substances Act (CSA) by adding various provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. The Ryan Haight Act makes it illegal under Federal law to “deliver, distribute, or dispense a controlled substance by means of the internet, except as authorized by [the CSA]” or to aid or abet such activity. 21 U.S.C. 841(h)(1).

On April 6, 2009, the Drug Enforcement Administration (DEA) published an interim final rule that served (1) to explain the Ryan Haight Act, (2) to announce amendments to DEA regulations that implemented the Act, and (3) to request comments on these amendments to the regulations. See 74 FR 15596.

Through this final rule, DEA is responding to the comments it received on the April 6, 2009, interim final rule and adopting the interim final rule as final without change (aside from a minor technical amendment and certain minor changes, discussed below, that were already made by intervening rules).

II. Summary of Some of the Key Provisions of the Ryan Haight Act

Congress passed the Ryan Haight Act because of “the increasing use of prescription controlled substances by adolescents and others for non-medical purposes, which [had] been exacerbated by drug trafficking on the internet.”¹ Recognizing that rogue websites fueled the abuse of prescription controlled substances and thereby increased the number of resulting overdoses and other harmful consequences, Congress passed the Ryan Haight Act to prevent the internet from being exploited to facilitate such unlawful drug activity.

Consistent with the CSA, the Ryan Haight Act set out numerous regulatory requirements and other substantive provisions. These provisions and other aspects of the Act are explained in detail in the interim final rule. See 74 FR 15597-15610. For this final rule, a summary of three key provisions of the Act will suffice: The in-person medical evaluation requirement for prescribing practitioners, the modified registration requirement for online pharmacies, and the criminal offenses the Act added to the CSA.

¹ S. Rep. No. 110-521, at 1 (2008).

A. In-Person Medical Evaluation Requirement

One of the primary ways in which the Act combats the use of the internet to facilitate illegal sales of pharmaceutical controlled substances is by mandating, with limited exceptions, that the dispensing of controlled substances by means of the internet be predicated on a valid prescription issued by a practitioner who has conducted at least one in-person medical evaluation of the patient. While the lack of an in-person medical evaluation has always been viewed as highly probative evidence that a prescription has been issued outside of the usual course of professional practice and for other than a legitimate medical purpose, the Act makes it unambiguous that it is a *per se* violation of the CSA for a practitioner to issue a prescription for a controlled substance by means of the internet without having conducted at least one in-person medical evaluation, except in certain specified circumstances. However, as Congress expressly stated under the Act, the mere fact that the prescribing practitioner conducted one in-person medical evaluation does not demonstrate that the prescription was issued for a legitimate medical purpose within the usual course of professional practice. Even where the prescribing practitioner has complied with the requirement of at least one in-person medical evaluation, a prescription for a controlled substance must still satisfy the longstanding requirement of federal law that it must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.²

B. Requirement of Modified Registration for Online Pharmacies

Another one of the core provisions of the Act is the requirement that any person who operates a website that fits within the definition of an “online pharmacy” must obtain from DEA a modification of its DEA pharmacy registration that expressly authorizes such online activity. Only DEA-registered pharmacies are eligible under the Act to obtain such a modification of registration. One of the ramifications of this requirement is that those who are not DEA-registered pharmacies (for example, those non-registrants who have previously facilitated unlawful internet controlled substance sales by

enlisting the services of illegitimate pharmacies and/or prescribing practitioners) are prohibited from operating online pharmacies.

The Act’s definition of “online pharmacy” encompasses more than merely legitimate pharmacies that may obtain a modification of their DEA registrations allowing them to dispense controlled substances by means of the internet. As explained below, the definition of “online pharmacy” includes, among others, those persons who operate the types of rogue websites that the Act was designed to eliminate. Consistent with the longstanding structure of the CSA (since it was enacted in 1970), the Act prohibits all controlled substance activities by “online pharmacies” except those expressly authorized by the Act. Again, only DEA-registered pharmacies may obtain a modification of their registration authorizing them to operate as online pharmacies. In addition, a pharmacy that has obtained such a modification of its registration may not operate as an online pharmacy unless it has notified DEA of its intent to do so and its website contains certain declarations designed to provide clear assurance that it is operating legitimately and in conformity with the Act.

C. Criminal Offenses

The Act also adds two new criminal offenses to the CSA. The first new criminal offense makes it explicitly unlawful for any person to knowingly or intentionally dispense, distribute, or deliver a controlled substance by means of the internet or to aid and abet such actions, except as authorized by the CSA, as stated in 21 U.S.C. 841(h)(1). The second new criminal offense added by the Act prohibits using the internet to knowingly or intentionally advertise illegal transactions of controlled substances that are not authorized by the CSA, as stated in 21 U.S.C. 841(h)(2). The Act contains specific examples of such conduct, as discussed in the interim final rule; however, it is important to note that the examples provided are not an exhaustive list of the types of conduct that constitute violations of 21 U.S.C. 841(h)(1) and 21 U.S.C. 841(h)(2).

III. The Interim Final Rule and Subsequent Changes to DEA Regulations

DEA published its interim final rule implementing the Ryan Haight Act at 74 FR 15596 on April 6, 2009. The interim final rule amended DEA’s regulations at 21 CFR parts 1300, 1301, 1304, and 1306 to carry out the Act. The specific

regulatory changes made by the interim final rule and herein adopted as a final rule are discussed in greater detail in Section V below.

While this final rule is not making any changes to the provisions of the interim final rule aside from a minor technical amendment discussed below, there have been two amendments to DEA’s regulations since the interim final rule was published that have further altered regulatory language that had been amended by the interim final rule.

The first change occurred in 2011, when 21 CFR 1301.52(a) was amended to provide for immediate termination of a registration, and all modifications of that registration, upon surrender by the registrant. 76 FR 61563. This final rule does not disturb that intervening 2011 amendment.

The second change occurred in 2012, when registration fees were increased for all business activities by amending DEA regulatory provisions including 21 CFR 1301.13(e)(1). 77 FR 15234. The change in 2012 increased the three-year registration fee for dispensers (which includes pharmacies) from \$551 to \$731, but it did not impose any additional fee to apply for the online pharmacy modification. Unfortunately, however, this amendment—though solely intended to adjust fees—also inadvertently removed the interim final rule’s changes to § 1301.13(e)(1). In particular, the interim final rule had amended § 1301.13(e)(1)(iv) to list “Online Pharmacy” as part of the business activity “[d]ispensing or instructing”; to list the online pharmacy application form, 224c; and to indicate, under “[c]oincident activities allowed” that “[a]n online pharmacy may perform activities of retail pharmacy as well as online pharmacy activities.” The revised version of § 1301.13(e)(1) placed in the Code of Federal Regulations by the 2012 amendment not only changed the fees in § 1301.13(e)(1), as intended, but also used an earlier version of the text of § 1301.13(e)(1)(iv) that did not contain the interim final rule’s additions, causing them to be inadvertently removed from § 1301.13(e)(1).

Thus, the current text of §§ 1301.13(e)(1) and 1301.52(a) differs from that contained in the interim final rule as published on April 6, 2009, because of these intervening amendments. This final rule, while otherwise adopting the regulatory revisions of the interim final rule, does not disturb these intervening amendments, except to reinstate the interim final rule’s changes to § 1301.13(e)(1) that were inadvertently undone by the 2012 registration fee

² 21 CFR 1306.04(a); *United States v. Moore*, 423 U.S. 122 (1975). This requirement has been a part of federal law since the Harrison Narcotic Act of 1914. *Id.* at 131. For a detailed explanation of the “legitimate medical purpose requirement,” see 71 FR 52716, 52717 (2006 DEA policy statement).

amendment. In particular, through this action, § 1301.13(e)(1)(iv) will be updated to: (1) Include online pharmacy as a type of “dispensing or instructing” business activity; (2) add Form DEA–224c to DEA application forms column; and (3) include a statement that online pharmacies are allowed to perform activities of a retail pharmacy and online pharmacy as a coincident activity.

Thus, the publication of this final rule does not alter the text of the Code of Federal Regulations except to reinstate the interim final rule’s § 1301.13(e)(1) amendments and to make one purely technical amendment to § 1304.40(c) to remove outdated information that is further discussed below.

IV. Discussion of Comments

DEA received nine comments on the interim final rule. Six commenters generally supported the rule while also raising issues of concern, and three commenters expressed opposition to the rule. The comments are summarized below, along with DEA’s responses.

A. Distributors’ Responsibilities

Some commenters expressed concerns that the precise scope of distributors’ obligations described in the interim final rule were unclear—in particular, distributors’ duty to avoid supplying pharmacies that service the customers of rogue websites. Another commenter sought clarification of whether, when a pharmacy’s buying patterns indicate a reasonable likelihood that it is supplying customers of a website, distributors are required to confirm only that the pharmacy has obtained a modified pharmacy registration under the Act, or must confirm that the pharmacy is in compliance with all requirements of the CSA. The same commenter argued that the language in the interim final rule suggested that distributors would be required to have knowledge of a pharmacy’s buying patterns before any transactions occurred with the pharmacy.

Some commenters stated that it is not feasible for distributors to know more about a pharmacy’s online activities than what would be discovered by verifying the pharmacy’s DEA registration status and conducting a routine due diligence investigation. The same commenters requested that DEA confirm whether it was the distributor’s responsibility, when faced with a pharmacy whose buying patterns indicate a reasonable likelihood that it is supplying customers of a website, to either confirm that the pharmacy has a modified DEA registration, or to obtain

a plausible alternative explanation to justify the buying pattern.

DEA Response. With respect to the obligation to confirm a pharmacy’s compliance with the requirements of the CSA, distributors, like all DEA registrants, have a duty to maintain effective controls against the diversion of controlled substances. 21 U.S.C. 823(b)(1), 823(e)(1); 21 CFR 1301.71(a). Failure to comply with this or any other applicable regulatory requirements may, depending on the circumstances, result in civil monetary penalties and/or administrative revocation proceedings. In addition, a distributor that knowingly or intentionally distributes controlled substances to a pharmacy that is dispensing controlled substances in violation of the Ryan Haight Act is subject to criminal prosecution under 21 U.S.C. 841(h)(1).

The Act introduces new requirements to ensure a pharmacy’s compliance with the registration modification provisions. This final rule does not, however, relieve distributors of their existing duty to maintain effective controls against diversion, including the obligation to conduct adequate due diligence, not only prior to distributing controlled substances to a new customer but also throughout the course of a distributor’s relationship with a customer.³

There are several ways for a distributor to determine whether a pharmacy is properly registered to dispense controlled substances by means of the internet. A pharmacy’s certificate of registration will state that it has obtained the requisite modification of its registration. A distributor can also verify the pharmacy’s status using DEA’s registration validation web tool. However, as DEA explained in both *Southwood* and *Masters*, “doing ‘nothing more than verifying a pharmacy’s DEA registration and state license’ is not enough” to comply with a distributor’s “duty to perform due

³ See *Masters Pharmaceuticals, Inc.*, 80 FR 55418, 55477 (2015). See also 21 CFR 1301.71(a) (“All applicants and registrants shall provide effective controls to guard against theft and diversion of controlled substances.”); *Southwood Pharmaceuticals, Inc.*, 72 FR 36487, 36498–36500 (2007) (discussing inadequacy of distributor’s due diligence efforts with respect to rogue internet pharmacies); 21 U.S.C. 823(b)(1) (directing the Attorney General to consider an applicant’s/registrant’s “maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels” when making the public interest determination with respect to the granting or revocation of a registration to distribute schedule I and II drugs); *id.* 823(e)(1) (same with respect to registration to distribute schedule III through V drugs).

diligence.”⁴ In *Masters*, DEA further held that “a distributor must conduct a reasonable investigation ‘to determine the nature of a potential customer’s business before it’ sells to the customer, and the distributor cannot ignore ‘information which raise[s] serious doubt as to the legality of [a potential . . . customer’s] business practices.’”⁵

Continuing in *Masters*, DEA explained that where “a customer provides information regarding its dispensing practices that is inconsistent with other information the distributor has obtained about or from the customer, or is inconsistent with information about pharmacies’ dispensing practices generally, the distributor must conduct ‘additional investigation to determine whether [its customer is] filling legitimate prescriptions.’”⁶ Finally, *Masters* explained that “the obligation to perform due diligence is ongoing throughout the course of a distributor’s relationship with its customer.”⁷ *Id.*

Thus, where a pharmacy’s buying patterns suggest that the pharmacy is filling prescriptions for a rogue website, it is not enough for a distributor to confirm only that the pharmacy has a modified pharmacy registration under the Ryan Haight Act.⁸ Rather, the distributor must confirm that the pharmacy is in compliance with the CSA’s requirement that it is filling only those prescriptions which have been issued by a practitioner acting in the usual course of professional practice for a legitimate medical purpose in accordance with 21 CFR 1306.04(a). Moreover, this requirement is not undermined by any contention that a pharmacy’s buying patterns may not be known at the time of its first transaction with a specific distributor: Pursuant to section 3273(a) of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act), Public Law 115–271, 132 Stat. 3894, DEA has created an online tool which allows distributors to obtain data as to the number of distributors that have sold to a prospective customer and the total quantity and type of opioids distributed to the prospective customer during the

⁴ *Masters*, 80 FR at 55477 (quoting *Southwood*, 72 FR at 36498).

⁵ *Id.*

⁶ *Id.* (quoting 72 FR at 55477).

⁷ *Id.*

⁸ Indeed, as of the date of this rule, no person or entity holds a modified registration authorizing the dispensing of controlled substances by means of the internet.

last six months.⁹ The SUPPORT Act further provides that “[a]ll registered manufacturers and distributors shall be responsible for reviewing this information” and that, in determining whether to initiate proceedings to suspend or revoke a manufacturer’s/distributor’s registration, DEA “may take into account that this information . . . was available to the registrant.”¹⁰ It should also be noted that federal law now provides that the failure to review this information is unlawful and is punishable by civil and criminal penalties.¹¹

In addition, nearly all pharmacies now use dispensing software which allows for the creation of a utilization/dispensing report. As *Masters* explains, a distributor, as part of its due diligence, should evaluate a customer’s dispensing ratio of controlled to non-controlled drugs as well as such other relevant data, including the types of controlled substances, the dosage forms, and quantities dispensed, and base this evaluation on the most accurate information available.¹² Thus, a distributor should be obtaining and reviewing utilization/dispensing reports both upon taking on a new customer and periodically throughout the course of its relationship with its customer. As *Masters* makes amply clear, the failure to obtain and review this information may constitute strong evidence that a distributor has failed to maintain effective controls against diversion and support a finding that its registration is inconsistent with the public interest.

Accordingly, while it is true that information as to a pharmacy’s buying patterns and/or dispensing activities may not point conclusively to a finding that the pharmacy is dispensing controlled substances in violation of the Ryan Haight Act, DEA’s experience has been that rogue online pharmacies present many of the same indicia of illegal dispensing activity as do brick and mortar pharmacies engaged in drug trafficking. Thus, even if a distributor does not have actual knowledge that the pharmacy is operating through a rogue website, if the pharmacy’s buying patterns or other circumstances surrounding an order create a reasonable suspicion that it is supplying customers of a website or otherwise engaging in practices that render it an online pharmacy within the meaning of the Act, the distributor should, prior to

filling any order for controlled substances, confirm whether the pharmacy has a modified registration. The distributor should also assess the likelihood that the pharmacy is filling only controlled substance prescriptions that comply with 21 CFR 1306.04(a).

In sum, if a pharmacy’s buying patterns or the other circumstances of an order create a reasonable suspicion that it is supplying customers of a website or otherwise engaging in practices that render it an online pharmacy within the meaning of the Act, but nothing else about the order appears suspect or unlawful, a distributor will not be held liable for supplying the pharmacy controlled substances if the distributor has confirmed that the pharmacy holds a modified registration. However, merely confirming that the pharmacy holds a modified registration will not relieve the distributor of liability if the pharmacy’s order raised grounds for suspicion that it was filling otherwise unlawful controlled substance prescriptions and the distributor did not properly resolve the grounds. Conversely, if a pharmacy’s order initially indicates that it may be supplying customers of a website, but the distributor is able to confirm an alternative justification for the suspect features of the order, it may lawfully fill the order and supply the pharmacy with controlled substances. To be clear, however, the distributor must actually confirm the alternative justification; it cannot simply conceive of some theoretical set of circumstances under which the pharmacy’s suspect order would be justified. As such, the commenters are correct that an alternative explanation can justify an otherwise suspect order, but as discussed above, distributors must conduct reasonable investigations to confirm the explanation.

B. Pharmacies’ Responsibilities

One commenter raised concerns regarding the variety of factors listed in the interim final rule as relevant to determining whether a prescription was issued by means of the internet. In particular, the commenter suggested that these factors are subjective. The same commenter requested that DEA define a reasonable distance between the pharmacy and a practitioner. This comment relates to DEA’s statement in the interim final rule that, in some circumstances, the distance between a pharmacy and a practitioner may be a relevant factor in assessing the likelihood that a prescription has been issued by means of the internet in violation of the Ryan Haight Act. *See* 74 FR 15607. Another commenter urged

DEA to enforce the pharmacy requirements in the manner outlined in the interim final rule, and not apply a more stringent standard than the ones discussed there.

DEA Response. DEA appreciates the commenter’s concerns regarding the factors to be considered when determining whether a pharmacist should reasonably suspect that a prescription was issued by means of the internet. Pharmacists have always had a responsibility to ensure the dispensing of controlled substances conforms with DEA’s regulations and the CSA and to exercise professional judgment in determining whether a controlled substance prescription has been lawfully issued in accordance with all provisions of the CSA.¹³ While a pharmacist is not obligated to know what cannot be known through the exercise of sound professional pharmacy practice, the relevant factors set forth in the interim final rule for determining whether a pharmacist should reasonably know that a prescription was issued by means of the internet have been based on numerous decisions of both the federal courts and this Agency involving rogue internet pharmacies and the physicians who wrote the prescriptions that were filled by them.¹⁴ Indeed, an examination of these and other cases reveals that the factual circumstances surrounding the issuance of the controlled substance prescriptions was so obviously outside the usual course of professional practice and for other than a legitimate medical purpose that no reasonable pharmacist could claim ignorance of the unlawfulness of the prescriptions.¹⁵

¹³ *See* 21 CFR 1306.04(a); *JM Pharmacy Group, Inc.*, 80 FR 28667, 28670 (2015) (quoting *Ralph J. Bertolino*, 55 FR 4729, 4730 (1990) (“a pharmacist must exercise professional judgment [and common sense] when filling a prescription”); *id.* (quoting *Medic-Aid Pharmacy*, 55 FR 30043, 30044 (1990) (“The administrative law judge concluded that it is not necessary to find that [the pharmacist] in fact knew that many prescriptions were presented to him that were not written for a legitimate medical purpose, for there is no question that a conscientious pharmacist would have been suspicious of these prescriptions and refused to fill them.”)).

¹⁴ *See United States v. Smith*, 573 F.3d 639, 657–658 (8th Cir. 2009); *United States v. Nelson*, 383 F.3d 1227, 1231–1232 (10th Cir. 2004); *Nirmal Saran, M.D., & Nisha Saran, D.O.*, 73 FR 78827 (2008); *Kamir Garces-Mejias, M.D.*, 72 FR 54931 (2007); *William R. Lockridge, M.D.*, 73 FR 78827 (2006); *Mario Alberto Diaz*, 71 FR 70780 (2006); *United Prescription Services, Inc.*, 72 FR 50397 (2007); *Trinity Health Care Corp., d/b/a Oviedo Discount Pharmacy*, 72 FR 30849 (2007). *See also Robert Raymond Reppy*, 76 FR 61154 (2011); *Sun & Lake Pharmacy, Inc.*, 76 FR 24523 (2011).

¹⁵ Under 21 CFR 1306.04(a), a pharmacist who knowingly fills a controlled substance prescription which has been issued outside of the usual course

⁹ Press Release, Drug Enforcement Administration, DEA announces enhanced tool for registered drug manufacturers and distributors to combat opioid crisis (Feb. 26, 2019).

¹⁰ 21 U.S.C. 827(f).

¹¹ 21 U.S.C. 842(a)(17), (c)(1)(B), (c)(2)(D).

¹² 80 FR at 55480–55481.

DEA's obligations under the Ryan Haight Act do not require it to establish a particular distance between a practitioner and pharmacy beyond which a prescription should be presumed to have been issued by means of the internet. As DEA stated in the interim final rule, the distance between a prescribing practitioner and the pharmacy is just one factor potentially relevant to assessing whether a prescription was issued by means of the internet. The Act and this rule rely on pharmacists to consider all of the circumstances surrounding a controlled substance prescription and exercise their professional judgment in determining whether to dispense the prescription. To address the other commenter's concerns about how these provisions of the Act will be enforced, the commenter should look to the standards outlined in the interim final rule, which set out the basis for DEA's enforcement of the Act's pharmacy requirements. These standards are being adopted as a final rule in this rulemaking.

C. Exceptions to the Definition of "Online Pharmacy"

The interim final rule contains ten exceptions to its definition of "online pharmacy," eight taken directly from the Ryan Haight Act. See 21 CFR 1300.04(h)(1)–(10); 21 U.S.C. 802(52)(B). Some commenters supported three particular exceptions: Pharmacies whose dispensing of controlled substances by means of the internet consists solely of (1) filling or refilling prescriptions for controlled substances in schedules III–V, as defined in the Act, 21 CFR 1300.04(h)(8); (2) filling prescriptions that were electronically prescribed in a manner otherwise consistent with the CSA, *id.* 1300.04(h)(9); or (3) transmitting prescription information between a

of professional practice has engaged in an unlawful distribution of a controlled substance in violation of 21 U.S.C. 841(a). So too, a pharmacist who knowingly or intentionally fills a controlled substance prescription issued in violation of the Ryan Haight Act commits a violation of 21 U.S.C. 841(h)(1).

While the scienter for criminal violations of section 841 requires proof that a pharmacist acted with intent, knowledge, or willful blindness, it should be noted that under the public interest standard applicable in revocation proceedings brought under 21 U.S.C. 824(a), DEA is not necessarily required to show that a pharmacist violated either section 841 or 21 CFR 1306.04(a) to establish liability. Rather, DEA can establish that a pharmacy has committed acts which render its registration inconsistent with the public interest by showing that a pharmacist engaged in the reckless or negligent dispensing of a controlled substance by failing to resolve the suspicious circumstances presented by a prescription. *Cf. Paul J. Caragine, Jr.*, 63 FR 51592, 51601 (1998).

pharmacy and an automated dispensing system located in a long term care facility, when the registration of the automated dispensing system is held by the pharmacy, *id.* § 1300.04(h)(10).

One commenter encouraged DEA to consistently emphasize this first exception in communications regarding the Act and its requirements. Another commenter expressed concern that the precise wording of the first and second exceptions is such that a pharmacy engaging in both filling or refilling prescriptions for controlled substances in schedules III–V, as defined in the Act, and filling prescriptions that were electronically prescribed in a manner otherwise consistent with the CSA would be considered an online pharmacy. Other commenters argued that additional exceptions to the definition of online pharmacy were required to properly exclude other activities conducted by means of the internet, such as central fill and processing and telepharmacy.

DEA Response. DEA thanks the commenters for their support of the exceptions to the definition of online pharmacy.

With respect to the concern that a pharmacy engaging in activity under each of the two separate exceptions (21 CFR 1300.04(h)(8), (9)) would be considered an online pharmacy, 21 CFR 1300.04(h)(9)(ii) already allows a registrant to engage in both categories of activity without being deemed an online pharmacy: "A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(9)(i) . . . it would fall outside the definition of an online pharmacy." Consistent with this section, if a pharmacy fills or refills prescriptions for controlled substances in schedules III–V and also fills prescriptions that were electronically prescribed, it could still qualify for the exception in paragraph (h)(9)(i) if, considering all the activity it engages in besides filling electronic prescriptions, including filling and refilling prescriptions for controlled substances in schedules III–V, it would not meet the definition of an online pharmacy.

DEA does not believe that further limitations on the definition of an online pharmacy are necessary at this time. This rule already includes ten separate exceptions to the definition of an online pharmacy, covering a broad range of activities; a majority of pharmacies fit within one or more of these existing exceptions.

D. Access to Medication

One commenter objected to the rule on the grounds that people with

disabilities and people confined to their homes who do not have a care provider to pick up medications from a pharmacy will be unable to receive the medications they need. Another commenter opposed the rule, stating that some patients need more medication than one doctor is permitted to prescribe. This commenter argued that it was neither cheap nor easy to get controlled substances from reputable online pharmacies in the United States, and that imposing additional requirements would drive patients to foreign online pharmacies or "street" dealers. A third commenter objected to the rule on the basis that it would reduce access to phentermine.

DEA Response. The ability of a patient or care provider to pick up medications from a pharmacy is outside of the scope of this rule. The amount of medication a doctor is permitted to prescribe and the costs of medication are outside of the scope of this rule. The Act provides that, subject to certain exceptions, controlled substances that are prescription drugs may not be dispensed by means of the internet without a valid prescription. In order to issue a valid prescription, the prescribing practitioner must have conducted at least one in-person medical evaluation of the patient, or else be a covering practitioner operating in a narrow set of circumstances. These requirements do not apply to the dispensing of controlled substances by practitioners engaged in the practice of telemedicine, but the Act did not modify the existing requirement that all controlled substance prescriptions, to be valid, must be issued for a legitimate medical purpose in the usual course of professional practice.

Patients who previously filled valid prescriptions by mail can continue to do so. Patients will need to visit a practitioner's office for an initial in-person medical evaluation or take part in a telemedicine encounter before being issued a prescription, but the vast majority of patients were likely already doing this before the enactment of the Act. This final rule does not decrease access to specific prescriptions of controlled substances as this rule ensures that only legitimate law abiding websites dispense controlled substances via the internet. Phentermine is a schedule IV controlled substance and all the requirements specified for schedule IV controlled substances are applicable because the new requirements do not exclude or include specific controlled substances. Furthermore, under the CSA, it is unlawful to ship controlled substances from abroad into the United States for personal medical use, and

individuals who place an order for such a shipment are in violation of the CSA and subject to criminal prosecution. 21 U.S.C. 952, 957, 960(a)(1).

E. Verification of Registration

One commenter recommended that DEA create a “list serve” email system to provide distributors real-time notifications of changes in registrants’ registration statuses, or to update the registration validation tool to allow registrants to check multiple DEA registrations automatically. The same commenter suggested DEA allow information obtained from the registration validation tool to be used as a suitable method of documenting verification of a customer’s registration during DEA inspections. Finally, the commenter suggested DEA conduct a number of outreach efforts to increase awareness of and engagement with the new requirements of the rule among members of the public and non-registrant companies.

DEA Response. DEA thanks the commenter for these suggestions. DEA strives to provide tools and resources to registrants and the public to discontinue the diversion and abuse of controlled substances, and always appreciates receiving additional ideas for how these goals can be achieved. The commenter’s suggestions, however, are beyond the scope of this rule, are not necessary for DEA to implement the Ryan Haight Act, and would require additional DEA resources to realize. Thus, DEA is not acting on these suggestions as part of this final rule, but will consider them as appropriate as DEA continues to provide additional tools and resources to registrants and the public in the future.

V. Section-by-Section Discussion of the Final Rule

As discussed above, DEA is adopting the interim final rule as a final rule without change, except for a technical amendment further explained below and certain minor changes already made by intervening rules. Thus, the interim final rule’s more detailed discussion of its provisions generally remains valid. *See* 74 FR 15610–15613. In brief, however, the final rule consists of the following provisions, all of which were already added to the Code of Federal Regulations by the interim final rule.

In part 1300 (definitions), § 1300.04, containing definitions relating to the dispensing of controlled substances by means of the internet, was added by the interim final rule and remains unchanged. These definitions are from the definitions contained in the Act and include definitions of the following

terms: “covering practitioner,” “deliver, distribute or dispense by means of the internet,” “filling new prescriptions for controlled substances in Schedule III, IV, or V,” “homepage,” “in-person medical evaluation,” “internet,” “online pharmacy,” “practice of telemedicine,” “refilling prescriptions for controlled substances in Schedule III, IV, or V,” “valid prescription,” and the temporary definition of “practice of telemedicine.”¹⁶ As discussed in the interim final rule and as authorized by the Act, § 1300.04 adds two exceptions to the definition of an online pharmacy beyond the eight exceptions provided for in the Act. *See* 21 CFR 1300.04(h); 21 U.S.C. 802(52)(B).

In part 1301 (registration of manufacturers, distributors, and dispensers of controlled substances), § 1301.11(b) restates the requirements of the Act that any person falling within the definition of an online pharmacy must be validly registered with a modification authorizing it to operate as an online pharmacy, and that only pharmacies registered under 21 U.S.C. 823(f) may apply for such modification.

To address the modification of registration as an online pharmacy, the table in § 1301.13(e)(1) was amended by the interim final rule. “Online Pharmacy” was listed as a business activity falling under “(iv) Dispensing or instructing.” The online pharmacy application form, 224c, was noted. And a comment was added in the “Coincident activities allowed” column to explain that an online pharmacy may perform the activities of both a retail and online pharmacy. As explained above, the table in § 1301.13(e)(1) was again amended in 2012 to increase registration fees. *See* 77 FR 15234. The revised version of the § 1301.13(e)(1) table placed in the Code of Federal Regulations by the 2012 amendment, however, not only changed fees in § 1301.13(e)(1) but also inadvertently removed the interim final rule’s

additions to § 1301.13(e)(1). This final rule reinstates them.

As added by the interim final rule, § 1301.19 (special requirements for online pharmacies) provides in paragraphs (a), (c), and (f) that a pharmacy must request a modification of its registration authorizing it to operate as an online pharmacy by completing the online application process. This section also provides, consistent with the Act, that a pharmacy registrant may not operate as an online pharmacy until DEA Administrator grants the modified registration. Paragraph (b) requires, consistent with the Act, that an online pharmacy must comply with the pharmacy license requirements of not only the State where it is located, but also of any State to which it delivers, distributes, or dispenses controlled substances. Paragraph (d) requires a pharmacy that seeks to discontinue its authorization to operate as an online pharmacy to modify its registration to reflect this change in its business activity.

Section 1301.52, which addresses termination of registrations, was revised by the interim final rule to include modification of registration within the meaning of the Act. As explained above, § 1301.52 was amended by another rule in 2011. *See* 76 FR 61563. This 2011 revision did not disturb the interim final rule’s changes, and thus the final rule requires no additional changes to § 1301.52.

Four new sections were added to 21 CFR part 1304 (records and reports of registrants) by the interim final rule to implement the reporting requirements of the Act for online pharmacies, and to specify the information the Act requires to be posted on an online pharmacy’s website. This final rule leaves three of these sections unchanged, but makes a minor technical amendment to a paragraph of one of these sections, § 1304.40(c).

Section 1304.40(a) requires online pharmacies to notify the Administrator and State boards of pharmacy 30 days before offering to fill prescriptions for controlled substances by means of the internet. Notification to the Administrator is made by applying for a modification of DEA registration. Paragraph (b) of § 1304.40 contains a list of items that must be included in the notification.

In the interim final rule, § 1304.40(c) required online pharmacies in operation of the time the Act became effective (April 13, 2009) to make this notification by May 13, 2009, and stated that, since April 13, 2009, it has been unlawful for any person to operate as an online pharmacy unless it has obtained

¹⁶ As explained in the interim final rule, the Ryan Haight Act provided two definitions of the “practice of telemedicine,” a temporary definition and a permanent definition. *See* 74 FR 15603; Public Law 110–425, sec. 3(j). The interim final rule incorporated both of these definitions, with the permanent definition, 21 CFR 1300.04(i), becoming effective on January 15, 2010, and the temporary definition, 21 CFR 1300.04(j), effective before that date. The permanent definition of the “practice of telemedicine” includes practice “conducted by a practitioner who has obtained from the Administrator a special registration under section 311(h) of the Act (21 U.S.C. 831(h)).” 21 CFR 1300.04(i)(5); 21 U.S.C. 802(54)(B). The Act, as amended, contemplates that DEA will issue regulations effectuating this telemedicine special registration provision by October 24, 2019. 21 U.S.C. 831(h)(2). DEA will further address the definition and requirements of telemedicine in future rulemaking.

from DEA a modification of its registration authorizing it to do so. Given the passage of time since the publication of the interim final rule, the first portion of paragraph (c) is no longer relevant, specifically the text stating that an online pharmacy in operation at the time the Act became effective must make the required notification on or before May 13, 2009. As such, in this final rule, DEA is making a technical amendment to § 1304.40(c) to remove this outdated text. The revised § 1304.40(c) retains the rest of the interim final rule's paragraph (c), stating that it is unlawful for any person to operate as an online pharmacy unless it has obtained from DEA a modification of its registration authorizing it to do so.

The remainder of § 1304.40 remains unchanged. As in the interim final rule, § 1304.40(d) requires that on and after an online pharmacy makes notification under this section, it shall display a declaration that it has done so. Under § 1304.40(e), an online pharmacy must notify the Administrator of any changes to the information submitted in its notification thirty days prior to the change.

Section 1304.45 specifies the data elements required to be posted on the website of online pharmacies in a visible and clear manner, as provided in the Act.

To identify websites that are operating solely on behalf of DEA-registered non-pharmacy practitioners who are acting within the scope of their registrations (and are thereby exempt from the definition of an online pharmacy), § 1304.50 requires such websites that dispense controlled substances by means of the internet to display in a visible and clear manner a list of those DEA-registered non-pharmacy practitioners affiliated with the website.

Section 1304.55 implements the requirement of the Act that each online pharmacy make a monthly report to DEA stating the total quantity of each controlled substance the pharmacy has dispensed the previous calendar month. This report must include not only the transactions made through the online pharmacy, but also any that the pharmacy made through mail order, face-to-face, or any other transaction when the pharmacy's total dispensing of controlled substances meets or exceeds the monthly threshold of either 100 prescriptions filled or 5,000 or more dosage units dispensed. Online pharmacies that do not meet this threshold in a given month are required to notify DEA.

In part 1306 (prescriptions), § 1306.09 includes requirements for prescriptions that track the requirements of the Act.

Paragraph (a) specifies that no controlled substance may be delivered, distributed, or dispensed by means of the internet without a valid prescription (using the definition of a valid prescription contained in the Act). Also consistent with the Act, paragraph (b) provides that such prescriptions may only be filled by a pharmacy whose registration has been modified as specified in the Act. Finally, paragraph (c) applies to online pharmacies the requirements of §§ 1306.15 and 1306.25 regarding transfers of prescriptions between pharmacies.

VI. Regulatory Analyses

Executive Orders 12866, 13563, and 13771

This rule was developed in accordance with the principles of Executive Orders (EOs) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, public health and safety, and environmental advantages; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. It defines a "significant regulatory action" requiring review by the Office of Management and Budget (OMB) as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

As discussed above, this final rule adopts the interim final rule without change, apart from certain changes to DEA regulations already made by intervening rules and a minor technical amendment. Therefore, this final rule imposes no costs beyond the costs already imposed by the interim final rule and those intervening rules. OMB has determined that this final rule is not a "significant regulatory action" under

E.O. 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by OMB.

This final rule is not a significant regulatory action under E.O. 12866, and it does not impose a cost greater than zero. Therefore, this final rule is not an E.O. 13771 regulatory action.

Regulatory Flexibility Act

The interim final rule was drafted in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The RFA applies to rules for which an agency publishes a general notice of proposed rulemaking. As was explained in the interim final rule, the Ryan Haight Act expressly contemplated that DEA would issue interim rules under the "good cause" provision of the APA as the agency deemed necessary to implement the Act prior to its effective date of April 13, 2009. Thus, Congress expressly granted DEA authority to issue regulations to implement the Act that become effective immediately, without the requirement of first seeking public comment through a notice of proposed rulemaking. Consequently, the requirements of the RFA did not apply to the interim final rule. Nonetheless, DEA did review the potential impacts, and determined that the rule was likely to affect a substantial number of small entities, but not likely to have a significant economic impact on those small entities. Furthermore, DEA sought comments in the interim final rule with respect to those parts of the regulatory text about which the agency has discretion. DEA received no comments regarding economic impacts. It seems unlikely, therefore, that small entities have been significantly impacted by this rule.

Paperwork Reduction Act

This final rule does not create or modify a collection of information or impose recordkeeping or reporting requirements under the Paperwork Reduction Act of 1995 beyond those modified by the interim final rule. 44 U.S.C. 3501–3521. That information collection requirement was previously approved by OMB under the assigned OMB Control Number 1117–0014. 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.

Executive Order 12988, Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted for inflation) in any one year,

and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

For the reasons set out above, the interim final rule amending 21 CFR parts 1300, 1301, 1304, and 1306, which was published at 74 FR 15596 on April 6, 2009, and as subsequently amended at 76 FR 61563 and 77 FR 15234, is adopted as final with the following changes to 21 CFR parts 1301 and 1304:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

■ 2. In § 1301.13, revise paragraph (e)(1)(iv) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

- (e) * * *
- (1) * * *

Business activity	Controlled substances	DEA application forms	Application fee (\$)	Registration period (years)	Coincident activities allowed
(iv) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Online Pharmacy, Central Fill Pharmacy, Teaching Institution).	Schedules II–V	New—224 Renewal—224a Online Pharmacy—224c.	731	3	May conduct research and instructional activities with those controlled substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under State statute. A pharmacist may manufacture an aqueous or oleaginous solution solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture. A retail pharmacy may perform central fill pharmacy activities. An online pharmacy may perform activities of retail pharmacy, as well as online pharmacy activities.

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

- 3. The authority for citation for part 1304 continues to read as follows:
Authority: 21 U.S.C. 821, 827, 831, 871(b), 958(e)–(g), and 965, unless otherwise noted.
- 4. In § 1304.40, revise paragraph (c) to read as follows:

§ 1304.40 Notification by online pharmacies.

(c) It is unlawful for any online pharmacy to deliver, distribute, or dispense a controlled substance by means of the internet unless such online pharmacy is validly registered with a

modification of such registration authorizing such activity.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–21310 Filed 9–29–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2020–0546]

Special Local Regulations; Swim Around Charleston, Charleston, SC**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Swim Around Charleston on October 11, 2020, from 8:30 a.m. until 4 p.m., to provide for the safety of life on navigable waterways during this event. The Coast Guard will enforce a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The temporary moving safety zone is necessary to protect swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels would be prohibited from entering the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: The regulation in 33 CFR 100.704 Table 1 to § 100.704, Item No. (9) will be enforced from 8:30 a.m. until 4 p.m. on October 11, 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, email Chad.L.Ray@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.704, Table 1 to § 100.704, Item No. (9), for the Swim Around Charleston from 8:30 a.m. through 4 p.m. on October 11, 2020. This action is being taken to provide for the safety of life on navigable waterways during this event. The regulation in § 100.704, Table 1 to § 100.704, Item No. (9), specifies the location of the regulated area for the Swim Around Charleston, which encompasses a portion of the waterways during the 12 mile swim from Remley's Point on the Wando River in approximate position 32°48'49" N, 79°54'27" W, crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I-526 bridge and boat landing on the Ashley River in approximate

position 32°50'14" N, 80°01'23" W. During the enforcement periods, as reflected in § 100.704(c)(1), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: September 22, 2020.

J.D. Cole,*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2020-21380 Filed 9-29-20; 8:45 am]

BILLING CODE 9110-04-P**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG–2020–0470]

RIN 1625-AA00**Safety Zone; Neponset River, Boston/Milton, MA****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 100-yard radius of Granite Avenue Bridge over the Neponset River; construction vessels and machinery will restrict the center span of the bascule bridge preventing openings to conduct structural steel repairs. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by repair work on the bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Boston.

DATES: This rule is effective from Friday, October 23, 2020 commencing at 7 p.m. through Friday, November 6, 2020 at 11:59 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2020–0470 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or

email Mr. Timothy Chase, Sector Boston, Waterways, U.S. Coast Guard; telephone 617–223–4000, email timothy.w.chase@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be unnecessary due to the fact that during the fall months there is less marine traffic and a majority of the vessels that transit under the bridge will not require an opening and may still safely pass by the work vessels at a safe distance.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Boston has determined that potential hazards associated with bridge repairs starting October 23, 2020, will be a safety concern for anyone within a 100-yard radius of bridge repair vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being repaired.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 p.m. on October 23, 2020, to 11:59 p.m. on November 6, 2020. The safety zone will cover all navigable waters within 100 yards of vessels and machinery being used by personnel to repair the Granite Avenue Bridge in Boston/Milton, Massachusetts. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being repaired. No vessel or person will be

permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting sixteen days and will prohibit entry within 100 yards of vessels and machinery being used by personnel to repair the Granite Avenue Bridge in Boston/Milton, Massachusetts. It is categorically excluded from further review under paragraph L(60a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T01–0470 to read as follows:

§ 165.T01–0470 Safety Zone; Neponset River, Boston/Milton, MA.

(a) *Location.* The following area is a safety zone: All navigable waters within a 100-yard radius of the Granite Avenue Bridge over the Neponset River.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP Boston in the enforcement of the safety zone.

(c) *Regulations.* When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP's representative via Channel 16 (VHF-FM) or 617-223-5757 (Sector Boston Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 p.m. on October 23, 2020, to 11:59 p.m. on November 6, 2020.

(e) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: September 14, 2020.

Eric J. Doucette,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2020-20625 Filed 9-29-20; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 5

[Docket No. PTO-P-2019-0033]

RIN 0651-AD43

Facilitating the Use of the World Intellectual Property Organization's ePCT System To Prepare International Applications for Filing With the United States Receiving Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is amending the foreign filing license rules to facilitate the use of ePCT (a World Intellectual Property Organization (WIPO) online service) to prepare an

international application for filing with the USPTO in its capacity as a Receiving Office (RO/US) under the Patent Cooperation Treaty (PCT). While the former foreign filing license rules authorized the export of technical data to ePCT for purposes of preparing an international application for filing in a foreign PCT Receiving Office, they did not authorize the export of technical data to ePCT for purposes of preparing an international application for filing with the RO/US. As a foreign filing license addresses the export of technical data, the USPTO is amending the foreign filing license rules to further provide that a foreign filing license from the USPTO authorizes the export of technical data abroad for purposes related to the use of ePCT to prepare an international application for filing with the RO/US under the PCT.

DATES: This final rule is effective on September 30, 2020.

FOR FURTHER INFORMATION CONTACT:

Michael Neas, Deputy Director, International Patent Legal Administration, at 571-272-3289, or Boris Milef, Senior Legal Examiner, International Patent Legal Administration, at 571-272-3288.

SUPPLEMENTARY INFORMATION: *Executive*

Summary: Purpose: The rules of practice in 37 CFR part 5 are amended to expand the scope of a foreign filing license from the USPTO to allow U.S. applicants to use WIPO's ePCT web-based service to help prepare their international applications for filing with the RO/US, as they are already permitted to do for filing with foreign ROs.

Summary of Major Provisions: Under former 37 CFR 5.11(b), a foreign filing license from the Commissioner for Patents authorized the export of technical data abroad for purposes related to the preparation, filing or possible filing, and prosecution of a foreign application, including an international application for filing in a PCT Receiving Office other than the RO/US. See 37 CFR 5.11(b)(2). Former 37 CFR 5.11 did not authorize the export of technical data abroad for purposes related to the preparation of an international application for filing with the RO/US. As a foreign filing license addresses the export of technical data, the provisions of 37 CFR 5.11(b) are amended to further provide that a foreign filing license from the Commissioner for Patents authorizes the export of technical data abroad for purposes related to the use of WIPO's online service for preparing an international application for filing with the RO/US.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Background: The notice of proposed rulemaking, published January 30, 2020 (85 FR 5362), provides background information on this rulemaking. That information is not repeated here.

This final rule updates the foreign filing license rules to provide that a foreign filing license from the USPTO, which are routinely applied for and granted as a matter of course in new application filings, would authorize the export of technical data abroad for purposes relating to the use of ePCT to prepare an international application for filing with the USPTO in its capacity as a Receiving Office under the PCT.

Applicants who are residents and/or nationals of the United States and its territories can file international applications directly with the Receiving Office of the International Bureau via ePCT or other means, provided that any national security provisions have been met prior to filing, *including obtaining any required foreign filing license.* See 37 CFR 5.11 and Manual of Patent Examining Procedure 140. The provisions of former 37 CFR 5.11(b) authorized U.S. applicants having a foreign filing license to export technical data abroad to servers located outside the United States hosting ePCT to prepare international applications for filing with the International Bureau as a Receiving Office, without having to separately comply with the regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730 through 774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce), and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy). *Id.* The provisions of former 37 CFR 5.11(b), however, did not authorize the export of technical data to such servers for the purpose of preparing international applications for filing with the RO/US.

The provisions of former 37 CFR 5.11(b) were last revised prior to the date the RO/US began accepting international applications prepared using ePCT and thus did not address whether applicants having a foreign filing license from the USPTO could use ePCT to prepare an international application for filing with the RO/US. Therefore, the USPTO updates the regulations in this final rule to permit applicants having a foreign filing license from the USPTO to use ePCT to prepare an international application for filing with the RO/US without having to

separately comply with the regulations set forth in 37 CFR 5.11(b).

Discussion of Specific Rules

The following is a discussion of the amendments to 37 CFR part 5.

Section 5.1: Section 5.1(b)(2) is amended to change the text “foreign patent office, foreign patent agency, or international agency” to “foreign or international intellectual property authority,” for consistency, as the term “intellectual property authority” is generally used in the patent statutes and other patent rules. See, e.g., 35 U.S.C. 111(c) and 119(b)(1) and (b)(3), and 37 CFR 1.55, 1.57(a), and 1.76(b)(6).

Section 5.11: Section 5.11(a) is amended to change the text “foreign patent office, foreign patent agency, or any international agency” to “foreign or international intellectual property authority,” consistent with the change to § 5.1(b)(2).

Section 5.11(b) is amended to provide that a license from the Commissioner for Patents under 35 U.S.C. 184 referred to in § 5.11(a) (“foreign filing license”) would additionally authorize the export of technical data abroad for purposes related to the use of a WIPO online service for preparing an international application for filing with the RO/US under the PCT.

The amendment would authorize applicants having a foreign filing license from the USPTO to use ePCT to prepare an international application for filing with the RO/US without having to separately comply with the regulations identified in § 5.11(b), *i.e.*, the regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730 through 774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce), and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy).

Section 5.11(e)(3) is amended to change “foreign patent application” to “foreign application” for consistency with the definition of foreign application in § 5.1(b)(2).

Section 5.12: Section 5.12(a) is amended to clarify that for an application on an invention made in the United States to be considered to include a petition for license under 35 U.S.C. 184, the application must be filed in the USPTO. An application that is filed abroad on an invention made in the United States but that comes to the United States for examination, for example, in the case of an international design application designating the United States that is filed abroad, would

not be considered to include a petition for a foreign filing license. Where an application was filed abroad through error without the required license under § 5.11 first having been obtained, applicants should consider filing a petition for retroactive license under § 5.25.

Section 5.15: Section 5.15(a) is amended for clarity to include a reference to § 5.11(b) concerning the export of technical data. In addition, “foreign patent agency or international patent agency” is changed to “foreign or international intellectual property authority.” See discussion of § 5.1(b)(2), *supra*. Section 5.15(a) is also amended to clarify that the grant of the license also covers material submitted under § 5.13, where there is no corresponding U.S. application.

Paragraphs (b) and (e) of § 5.15 are amended consistent with the amendments to § 5.15(a).

Comments and Responses to Comments: The USPTO published a notice of proposed rulemaking on January 30, 2020, proposing to change the rules of practice to facilitate the use of WIPO’s ePCT system for U.S. applicants. See *Facilitating the Use of WIPO’s ePCT System To Prepare International Applications for Filing With the United States Receiving Office*, 85 FR 5362 (Jan. 30, 2020). The USPTO received three comments from five submitters—more particularly, from a law firm, individual patent practitioners, and the general public—in response to the notice of proposed rulemaking. The summarized comments and the USPTO’s responses to those comments follow:

Comment 1: While all the written submissions received supported the proposed rule changes, several submitters also requested that the USPTO expressly state, in this final rule, that the warnings set forth in the notice titled *Use of WIPO’s ePCT System for Preparing the PCT Request for Filing as Part of an International Application with the USPTO as Receiving Office*, 81 FR 27417 (May 6, 2016) (hereafter “2016 notice”) no longer apply. Those comments explained that such a statement would help in training and outreach efforts to encourage the use of ePCT, which, in turn, would benefit applicants, patent practitioners, and offices.

Response: The USPTO agrees that as a result of this rulemaking, the warning in the 2016 notice regarding exporting subject matter, pursuant to a foreign filing license from the USPTO, into ePCT for preparing an international application for filing with the RO/US no longer applies. However, applicants are

cautioned that the warnings in the 2016 notice are still applicable in the limited situations where the applicant either does not have a foreign filing license or would be exporting additional subject matter not included within the scope of the foreign filing license from the USPTO.

Comment 2: Several submitters requested the USPTO develop a mechanism to facilitate updating bibliographic data in PCT applications, similar to the mechanism available through ePCT.

Response: The USPTO notes the request to develop a mechanism to facilitate updating of bibliographic data in PCT applications. While such a mechanism would provide some benefits to PCT users, the process for evaluating and prioritizing information technology projects within the USPTO is beyond the scope of this final rule. The USPTO intends to consider the request raised in the comment through the appropriate internal process.

Comment 3: One submitter, while supporting the proposed rule changes stated that the changes would make it easier for foreign filers to file their PCT applications in the United States, and said that this was necessary because U.S. inventors already have this benefit when filing a PCT application in the other member states.

Response: The commenter appears to have misunderstood the purpose of this rule. The revised rules change neither who may file a PCT application with the RO/US, nor who may represent such applicants before the RO/US. See 35 U.S.C. 361 and § 1.421 regarding who may file a PCT application with the RO/US, and § 1.455 regarding who may represent a PCT applicant before the USPTO.

Rulemaking Considerations

A. Administrative Procedure Act: This document makes changes to the rules of practice to facilitate the use of WIPO’s ePCT system to prepare international applications for filing with the RO/US. The changes being made in this document do not change the substantive criteria of patentability. These changes involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*,

260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for these changes are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”) (quoting 5 U.S.C. 553(b)(A)). The USPTO, however, published the proposed changes for comment because it sought the benefit of the public’s views on the USPTO’s implementation of the proposed rule changes.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs in the Office of General Law of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this document will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The changes made in this document will facilitate the use of WIPO’s ePCT system to prepare international applications for filing with the RO/US and will apply to any entity, including a small or micro entity, that uses ePCT to prepare an international patent application under the PCT for filing with the RO/US. The changes made in this document will not result in a change in the burden imposed on any patent applicant, including a small entity.

For the foregoing reasons, the changes made in this document will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563. Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in

an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This final rule is not expected to be an Executive Order 13771 regulatory action because the final rule would not be significant under Executive Order 12866.

F. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this document are not expected to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this document is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this document do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements that are subject to review by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

(44 U.S.C. 3501–3549). The collection of information involved in this rulemaking has been reviewed and previously approved by OMB under control number 0651–0021. This rulemaking does not impose any additional collection requirements under the Paperwork Reduction Act that are subject to further review by OMB. The collections of information already approved under control number 0651–0021 support the actions proposed in this rulemaking. Therefore, no changes are required in the collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

For the reasons set forth in the preamble, 37 CFR part 5 is amended as follows:

PART 5—SECREC Y OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 1. The authority citation for 37 CFR part 5 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188; 22 U.S.C. 2751 *et seq.*; 42 U.S.C. 2011 *et seq.*; 22 U.S.C. 3201 *et seq.*; and the delegations to the Director in 15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7.

■ 2. Section 5.1 is amended by revising paragraph (b)(2) to read as follows:

§ 5.1 Applications and correspondence involving national security.

* * * * *

(b) * * *

(2) Foreign application as used in this part includes, for filing in a foreign country or in a foreign or international intellectual property authority (other than the United States Patent and Trademark Office acting as a Receiving Office for international applications (35 U.S.C. 361, 37 CFR 1.412) or as an office of indirect filing for international design applications (35 U.S.C. 382, 37 CFR 1.1002)) any of the following: An application for patent; international application; international design application; or application for the registration of a utility model, industrial design, or model.

* * * * *

■ 3. Section 5.11 is amended by revising paragraphs (a), (b), and (e)(3) introductory text to read as follows:

§ 5.11 License for filing in, or exporting to, a foreign country an application on an invention made in the United States or technical data relating thereto.

(a) A license from the Commissioner for Patents under 35 U.S.C. 184 is required before filing any application for patent, including any modifications, amendments, or supplements thereto or divisions thereof, or for the registration of a utility model, industrial design, or model, in a foreign country or in a foreign or international intellectual property authority (other than the United States Patent and Trademark Office acting as a Receiving Office for international applications (35 U.S.C. 361, 37 CFR 1.412) or as an office of indirect filing for international design applications (35 U.S.C. 382, 37 CFR 1.1002)), if the invention was made in the United States, and:

- (1) An application on the invention has been filed in the United States less than six months prior to the date on which the application is to be filed; or
- (2) No application on the invention has been filed in the United States.

(b) The license from the Commissioner for Patents referred to in paragraph (a) of this section would also authorize the export of technical data abroad for purposes related to:

- (1) The preparation, filing or possible filing, and prosecution of a foreign application; and
- (2) The use of a World Intellectual Property Organization online service for preparing an international application for filing with the United States Patent and Trademark Office acting as a Receiving Office (35 U.S.C. 361, 37 CFR 1.412) without separately complying with the regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730 through 774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce), and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy).

* * * * *

(e) * * *

(3) For subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign application if:

* * * * *

■ 4. Section 5.12 is amended by revising paragraph (a) and removing the parenthetical authority at the end of the section to read as follows:

§ 5.12 Petition for license.

(a) Filing of an application in the United States Patent and Trademark Office on an invention made in the United States will be considered to include a petition for license under 35 U.S.C. 184 for the subject matter of the application. The filing receipt or other official notice will indicate if a license is granted. If the initial automatic petition is not granted, a subsequent petition may be filed under paragraph (b) of this section.

* * * * *

■ 5. Section 5.15 is amended by revising paragraphs (a) introductory text, (a)(1), (b), and (e) to read as follows:

§ 5.15 Scope of license.

(a) Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181, will be eligible for a license of the scope provided in this paragraph (a). This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign application, if such changes to the application do not alter the general nature of the invention in a manner that would require the United States application to have been made available for inspection under 35 U.S.C. 181. Grant of this license authorizes the export of technical data pursuant to § 5.11(b) and the filing of an application in a foreign country or with any foreign or international intellectual property authority when the technical data and the subject matter of the foreign application correspond to that of the application or other materials reviewed pursuant to §§ 5.12 through 5.14, upon which the license was granted. This license includes the authority:

- (1) To export and file all duplicate and formal application papers in foreign countries or with foreign or international intellectual property authorities;

* * * * *

(b) Applications or other materials that were required to be made available for inspection under 35 U.S.C. 181 will be eligible for a license of the scope provided in this paragraph (b). Grant of this license authorizes the export of technical data pursuant to § 5.11(b) and the filing of an application in a foreign country or with any foreign or international intellectual property authority. Further, this license includes the authority to export and file all duplicate and formal papers in foreign countries or with foreign or

international intellectual property authorities and to make amendments, modifications, and supplements to; file divisions of; and take any action in the prosecution of the foreign application, provided subject matter additional to that covered by the license is not involved.

* * * * *

(e) Any paper filed abroad or transmitted to a foreign or international intellectual property authority following the filing of a foreign application that changes the general nature of the subject matter disclosed at the time of filing in a manner that would require such application to have been made available for inspection under 35 U.S.C. 181 or that involves the disclosure of subject matter listed in paragraph (a)(3)(i) or (ii) of this section must be separately licensed in the same manner as a foreign application. Further, if no license has been granted under § 5.12(a) after filing the corresponding United States application, any paper filed abroad or with a foreign or international intellectual property authority that involves the disclosure of additional subject matter must be licensed in the same manner as a foreign application.

* * * * *

Dated: August 19, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020-18743 Filed 9-29-20; 8:45 am]

BILLING CODE 3510-16-P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, International Mail Manual (IMM®)* dated July 1, 2020, and its incorporation by reference in the *Code of Federal Regulations*.

DATES: This final rule is effective on September 30, 2020. The incorporation by reference of the IMM is approved by the Director of the Federal Register as of September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy, (202) 268-6592.

SUPPLEMENTARY INFORMATION: The *International Mail Manual* was issued on July 1, 2020, and was updated with

Postal Bulletin revisions through June 18, 2020. It replaced all previous editions. The IMM continues to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. It continues to: (1) Increase the user's ability to find information; (2) increase the user's confidence that he or she has found the information they need; and (3) reduce the need to consult multiple sources to locate necessary information. The provisions throughout this issue support the standards and mail preparation changes implemented since the version of March 4, 2019. The *International Mail Manual* is available to the public on the Postal Explorer® internet site at <http://pe.usps.com>.

List of Subjects in 39 CFR Part 20

Foreign relations; Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise § 20.1 to read as follows:

§ 20.1 Incorporation by reference; Mailing Standards of the United States Postal Service, International Mail Manual.

(a) Mailing Standards of the United States Postal Service, International Mail Manual (IMM) is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

(1) *Purchase.* Copies of Mailing Standards of the United States Postal Service, International Mail Manual can be purchased by the public from the Superintendent of Documents, Washington, DC 20402-9375.

(2) *Inspection—USPS.* Copies of the Mailing Standards of the United States Postal Service, International Mail Manual are available during regular business hours for reference and public inspection at the U.S. Postal Service Library, U.S. Postal Service Library, 475 L'Enfant Plaza West SW, Washington, DC 20260-1641, 202-268-2906. They are also available during regular business hours for public inspection at area and district offices of the Postal Service and at all post offices, classified

stations, and classified branches. The Mailing Standards of the United States Postal Service, Domestic Mail Manual is available for examination on the internet at <http://pe.usps.gov>.

(3) *Inspection—NARA.* It is for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) The Director of the Federal Register approved IMM, updated July 1, 2020, for incorporation by reference as of September 30, 2020.

■ 3. Revise § 20.2 to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the *International Mail Manual* issued July 1, 2020, (incorporated by reference, see § 20.1) are applicable with respect to the international mail services of the Postal Service.

§ 20.3 [Removed and Reserved]

■ 3. Remove and reserve § 20.3.

■ 4. Revise § 20.4 to read as follows:

§ 20.4 Amendments to the International Mail Manual.

(a) The current issue of the IMM is incorporated by reference, see § 20.1.

(b) New issues of the International Mail Manual will be incorporated by reference into this part and will be available at <http://pe.usps.gov>. The text of amendments to the International Mail Manual will be published in the **Federal Register** and will be available in the Postal Bulletin, copies of which may be accessed at <http://www.usps.com/cpim/ftp/bulletin/pb.htm>. Successive issues of the IMM are listed in Table 1 to this section.

TABLE 1 TO § 20.4—INTERNATIONAL MAIL MANUAL

International Mail Manual	Date of issuance
Issue 1	November 13, 1981.
Issue 2	March 1, 1983.
Issue 3	July 4, 1985.
Issue 4	September 18, 1986.
Issue 5	April 21, 1988.
Issue 6	October 5, 1988.
Issue 7	July 20, 1989.
Issue 8	June 28, 1990.
Issue 9	February 3, 1991.
Issue 10	June 25, 1992.
Issue 11	December 24, 1992.
Issue 12	July 8, 1993.
Issue 13	February 3, 1994.
Issue 14	August 4, 1994.
Issue 15	July 9, 1995.
Issue 16	January 4, 1996.
Issue 17	September 12, 1996.

TABLE 1 TO § 20.4—INTERNATIONAL MAIL MANUAL—Continued

International Mail Manual	Date of issuance
Issue 18	June 9, 1997.
Issue 19	October 9, 1997.
Issue 20	July 2, 1998.
Issue 21	May 3, 1999.
Issue 22	January 1, 2000.
Issue 23	July 31, 2000.
Issue 24	January 1, 2001.
Issue 25	July 1, 2001.
Issue 26	January 1, 2002.
Issue 27	June 30, 2002.
Issue 28	January 1, 2003.
Issue 29	July 1, 2003.
Issue 30	August 1, 2004.
Issue 31	May 31, 2005.
Issue 35	May 12, 2008.
Issue 36	May 11, 2009.
IMM	April 17, 2011.
IMM	June 24, 2012.
IMM	January 26, 2015.
IMM	July 11, 2016.
IMM	January 22, 2017.
IMM	March 5, 2018.
IMM	March 4, 2019.
IMM	July 1, 2020.

Joshua J. Hofer,
 Attorney, Federal Compliance.
 [FR Doc. 2020–19314 Filed 9–29–20; 8:45 am]
 BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.
ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) dated July 1, 2020, and its incorporation by reference in the *Code of Federal Regulations*.

DATES: This final rule is effective on September 30, 2020. The incorporation by reference of the DMM dated July 1, 2020, is approved by the Director of the Federal Register as of September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy (202) 268–6592.

SUPPLEMENTARY INFORMATION: The most recent issue of the *Domestic Mail*

Manual (DMM) is dated July 1, 2020. This issue of the DMM contains all Postal Service domestic mailing standards, and continues to: (1) Increase the user’s ability to find information; (2) increase confidence that users have found all the information they need; and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. The issue dated July 1, 2020, sets forth specific changes, including new standards throughout the DMM to support the standards and mail preparation changes implemented since the version issued on March 4, 2019.

Changes to mailing standards will continue to be published through **Federal Register** notices and the *Postal Bulletin*, and will appear in the next online version available via the Postal Explorer® website at: <https://pe.usps.com>.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 111 as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise § 111.1 to read as follows:

§ 111.1 Incorporation by reference; Mailing Standards of the United States Postal Service, Domestic Mail Manual.

(a) Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

(1) *Subscriptions.* Subscriptions to the Mailing Standards of the United States Postal Service, Domestic Mail Manual can be purchased by the public from the Superintendent of Documents, Washington, DC 20402–9375.

(2) *Inspection—USPS.* (i) Copies of the Mailing Standards of the United States Postal Service, Domestic Mail Manual, both current and previous

issues, are available during regular business hours for reference and public inspection at the U.S. Postal Service Library, National Headquarters in Washington, DC. For access contact 202–268–2906.

(ii) Copies of only the current issue are available during regular business hours for public inspection at area and district offices of the Postal Service and at all post offices, classified stations, and classified branches. The Mailing Standards of the United States Postal Service, Domestic Mail Manual is available for examination on the internet at <http://pe.usps.gov>.

(3) *Inspection—NARA.* It is for inspection 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 www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) The Director of the Federal Register approved DMM, updated July 1, 2020, for incorporation by reference as of September 30, 2020.

§ 111.2 [Removed and Reserved]

- 3. Remove and reserve § 111.2.
- 4. Amend § 111.3 by:
 - a. Revising paragraph (a); and
 - b. Adding a heading to the table following paragraph (f) and an entry to the end of the table.

The revisions and additions read as follows:

§ 111.3 Amendments to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

(a) A complete issue of the DMM is incorporated by reference annually (see § 111.1). Except for interim or final regulations published as provided in paragraph (b) of this section, only notifications rather than complete text of changes made to the DMM are published in the **Federal Register**. These documents are published in the form of one summary transmittal letter for each issue of the DMM. A complete issue of the DMM incorporated by reference, which includes the text of all changes published to date, is filed with the Director, Office of the Federal Register. Subscribers to the DMM receive the latest issue of the DMM from the Government Publishing Office (see § 111.1 for subscription information).

* * * * *

TABLE 1 TO § 111.3—DOMESTIC MAIL MANUAL

Transmittal letter for issue	Dated	Federal Register publication
DMM	July 1, 2020	[INSERT Federal Register CITATION FOR THIS RULE]

§ 111.4 [Removed and Reserved]

■ 5. Remove and reserve § 111.4.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–19315 Filed 9–29–20; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; EPA–HQ–SFUND–2004–0004; EPA–HQ–SFUND–1999–0013; EPA–HQ–SFUND–1986–0005; EPA–HQ–SFUND–2011–0066; EPA–HQ–SFUND–1999–0013; EPA–HQ–SFUND–1989–008; EPA–HQ–SFUND–1983–0002; EPA–HQ–SFUND–2000–0006; EPA–HQ–SFUND–2005–0011; EPA–HQ–SFUND–1994–0009; EPA–HQ–SFUND–1992–0014; FRL–10014–15–OLEM]

Deletions From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of eight sites and the partial deletion of nine sites from the Superfund National Priorities List (NPL). The NPL, created under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the states, through their designated state agencies, have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, where applicable, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: The document is effective on September 30, 2020.

ADDRESSES:

Docket: EPA has established a docket for this action under the Docket Identification included in Table 1 in the

SUPPLEMENTARY INFORMATION section of this document. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the corresponding Regional Records Centers. Locations, addresses, and phone numbers of the Regional Records Centers follow.

- Regional Records Centers:
- Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
 - Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4342.
 - Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street Mail code 3HS12, Philadelphia, PA 19103; 215/814–3355.
 - Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303; 404/562–8637.
 - Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
 - Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mail code 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
 - Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
 - Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code Records Center, Denver, CO 80202–1129; 303/312–7273.
 - Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mail code SFD 6–1, San Francisco, CA 94105; 415/972–3160.

- Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155, Mail stop OMP–161, Seattle, WA 98101; 206/553–4494.

The EPA is temporarily suspending Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. Information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT:

- Robert Lim, U.S. EPA Region 1 (CT, ME, MA, NH, RI, VT), lim.robert@epa.gov, 617/918–1392
- Mabel Garcia, U.S. EPA Region 2 (NJ, NY, PR, VI), garcia.mabel@epa.gov, 212/637–4356
- Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), hass.andrew@epa.gov, 215/814–2049
- Deborah Cox or Brian Farrier, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), cox.deborah@epa.gov or farrier.brian@epa.gov, 404/562–8317 or 404/562–8952.
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), cibulskis.karen@epa.gov, 312/886–1843
- Brian Mueller, U.S. EPA Region 6 (AR, LA, NM, OK, TX), mueller.brian@epa.gov, 214/665–7167
- David Wennerstrom, U.S. EPA Region 7 (IA, KS, MO, NE), wennerstrom.david@epa.gov, 913/551–7996
- Linda Kiefer, U.S. EPA Region 8 (CO, MT, ND, SD, UT, WY), kiefer.linda@epa.gov, 303/312–6689
- Eric Canteenwala, U.S. EPA Region 9 (AZ, CA, HI, NV, AS, GU, MP), Canteenwala.eric@epa.gov, 415/972–3932
- Jeremy Jennings, U.S. EPA Region 10 (AK, ID, OR, WA), jennings.jeremy@epa.gov, 206/553–2724
- Chuck Sands, U.S. EPA Headquarters, sands.charles@epa.gov, 703/603–8857

SUPPLEMENTARY INFORMATION: Table 1- the sites to be deleted and partially deleted from the NPL are:

TABLE 1

Site name	City/county, state	Type	Docket No.
American Crossarm & Conduit Co	Chehalis, WA	Full	EPA-HQ-SFUND-1989-0011
Annapolis Lead Mine	Annapolis, MO	Full	EPA-HQ-SFUND-2004-0004
Cimarron Mining Corp	Carrizozo, NM	Full	EPA-HQ-SFUND-1989-0011
Fridley Commons Park Well Field	Fridley, MN	Full	EPA-HQ-SFUND-1999-0013
Jasco Chemical Corp	Mountain View, CA	Full	EPA-HQ-SFUND-1989-0011
Northside Landfill	Spokane, WA	Full	EPA-HQ-SFUND-1986-0005
Red Panther Chemical Company	Clarksdale, MS	Full	EPA-HQ-SFUND-2011-0066
Tulsa Fuel and Manufacturing	Collinsville, OK	Full	EPA-HQ-SFUND-1999-0013
Anaconda Co. Smelter	Anaconda, MT	Partial	EPA-HQ-SFUND-1983-0002
Douglass Road/Uniroyal, Inc., Landfill	Mishawaka, IN	Partial	EPA-HQ-SFUND-1989-0008
Fort Wayne Reduction Dump	Fort Wayne, IN	Partial	EPA-HQ-SFUND-1986-0005
Industri-Plex	Woburn, MA	Partial	EPA-HQ-SFUND-1983-0002
Macalloy Corporation	North Charleston, SC	Partial	EPA-HQ-SFUND-2000-0006
Queen City Farms	Maple Valley, WA	Partial	EPA-HQ-SFUND-2005-0011
Redstone Arsenal (USARMY/NASA)	Huntsville, AL	Partial	EPA-HQ-SFUND-1994-0009
Southeast Rockford Gd Wtr Contamination	Rockford, IL	Partial	EPA-HQ-SFUND-1989-0008
U.S. Smelter & Lead Refining Inc	East Chicago, IN	Partial	EPA-HQ-SFUND-1992-0014

The sites to be deleted from the NPL, information concerning the proposed rule for the deletion including reference documents with the rationale and data

principally relied upon by the EPA to determine that the Superfund response is complete, public comment and Responsiveness Summary (RS) (if

applicable) are included in Table 2 as follows:

TABLE 2

Site name	Date, proposed rule	FR citation	Public comment	RS	Footnote
American Crossarm & Conduit Co	7/10/2020	85 FR 41486	No	No	1, 3
Annapolis Lead Mine	7/10/2020	85 FR 41487	No	No	1, 2, 3
Cimarron Mining Corp	8/5/2020	85 FR 47331	No	No	1, 2, 3
Fridley Commons Park Well Field	6/23/2020	85 FR 37619	Yes	No	
Jasco Chemical Corp	5/26/2020	85 FR 31427	Yes	Yes	
Northside Landfill	7/14/2020	85 FR 42431	Yes	Yes	1, 3
Red Panther Chemical Company	7/15/2020	85 FR 42813	No	No	
Tulsa Fuel and Manufacturing	7/16/2020	85 FR 43193	No	No	1, 2, 3

The NCP permits activities to occur at a deleted site or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews These activities for the site are entered in Table 2 and 3 in this **SUPPLEMENTARY INFORMATION** section, if applicable, under Footnote such that; 1= site has continued operation and maintenance of the remedy, 2= site receives continued monitoring, and 3= site five-year reviews are conducted.

The EPA received comments on three of the sites included for deletion in this final rule. For the Fridley Commons Park Well Field site, the closing date for comments on the Notice of Intent to Delete was July 23, 2020. One public comment was received which was not related to the deletion of the site from the NPL and EPA still believes the deletion action is appropriate. The comment and a memorandum

documenting receipt of the comment were prepared and placed in the docket, EPA-HQ-SFUND-1999-0013, on <https://www.regulations.gov>, and in the Regional repository listed in the **ADDRESSES** section.

For the Jasco Chemical Corp. site, the closing date for comments on the Notice of Intent to Delete was June 25, 2020. Eight public comments were received. Commenters were concerned with a nearby unrelated chemical plume and exposure to construction workers and future residents of an apartment complex under construction at the site. Potential risks to workers and future residents at the Jasco site are being managed independently of the CERCLA cleanup process. There is a Covenant and Environmental Restriction on Property, or deed restriction, on the Jasco property which requires the California Regional Water Quality Control Board and EPA to oversee future

use of the site, and to ensure soil and groundwater is managed according to a soil management plan that prevents any human exposure. The plan ensures continued sampling of site soil and groundwater, as it is transported offsite, to assure protection of human health and environment. A vapor mitigation system will be installed under the building and confirmatory pre-occupancy indoor air sampling to verify the efficacy of the system. EPA has determined that it is appropriate to proceed with the deletion because all response actions at the Jasco site are complete and the criteria for deletion have been met. A responsiveness summary was prepared and placed in the docket, EPA-HQ-SFUND-1989-0011, on <https://www.regulations.gov>, and in the Regional repository listed in the **ADDRESSES** section.

For the Northside Landfill site, the closing date for comments on the Notice

of Intent to Delete was August 13, 2020. Two public comments were received. One commenter was concerned that EPA make decisions using good science and hard data. Such decision-making is documented in reports included in the deletion docket. The other commenter was concerned about the future use of the landfill property, particularly residential or commercial redevelopment. The site has an

Environmental Covenant which restricts future uses of the site. The limitations prohibit any activity that would damage or disturb the integrity of the landfill cap which include any drilling, digging, excavation or placement of objects or equipment which would stress or deform the surface. Any future land use would need to be consistent with the Environmental Covenant. EPA still believes the deletion action is

appropriate. A responsiveness summary was prepared and placed in the docket, EPA-HQ-SFUND-1986-0005, on <https://www.regulations.gov>, and in the Regional repository listed in the **ADDRESSES** section. For all other sites not specified above, no adverse comments were received.

The sites to be partially deleted from the NPL are included in Table 3 as follows:

TABLE 3

Site name	Date, proposed rule	FR citation	Public comment	RS	Footnote
Anaconda Co. Smelter	8/10/2020	85 FR 48132	No	No	1, 2, 3
Douglass Road/Uniroyal, Inc., Landfill	6/23/2020	85 FR 37617	Yes	Yes	1, 2, 3
Fort Wayne Reduction Dump	7/16/2020	85 FR 43191	Yes	Yes	1, 2, 3
Industri-Plex	7/15/2020	85 FR 42809	No	No .....	.....
Macalloy Corporation	7/27/2020	85 FR 45155	Yes	Yes	2, 3
Queen City Farms	7/14/2020	85 FR 42343	Yes	Yes	1, 2, 3
Redstone Arsenal (USARMY/NASA)	7/22/2020	85 FR 44259	No	No .....	.....
Southeast Rockford Gd Wtr Contamination	6/23/2020	85 FR 37615	Yes	No .....	.....
U.S. Smelter & Lead Refining Inc	7/8/2020	85 FR 40959	Yes	Yes .....	.....

The area and media of each Superfund site partial deletion is specified in the applicable proposed rule cited in Table 3 in this **SUPPLEMENTARY INFORMATION** section. All other Superfund site areas and media will remain on the NPL and are not being considered for deletion as part of this action.

The EPA received comments on six of the sites included for partial deletion in this rule. For the Douglass Road/Uniroyal, Inc., Landfill site, the closing date for comments on the Notice of Intent to Partially Delete was July 23, 2020. Three public comments were received. One comment from a resident in a nearby area expressed concern that the site is contaminating their well water and a nearby lake; the resident requested that the well water be tested. EPA and the state do not believe this area to be contaminated as explained to the commenter, and the state and county have offered to conduct sampling of the well. EPA also received one comment with property ownership records for Operable Unit 1, which EPA added to the deletion docket and site file. The City of Mishawaka commented and was concerned that deleting the Landfill Cap Area portion of the site from the NPL meant that the landfill gas control system would be shut down. The active landfill gas control system at the site, as well as other operation and maintenance activities, will continue after the partial deletion. The City also wanted to confirm that given the remaining levels of groundwater contamination at the site, all future

development in the area will need to remain on municipal water. EPA confirmed that the groundwater portion of the site would remain on the NPL and future development in the area will likely need to remain on municipal water. EPA still believes the deletion action is appropriate. A responsiveness summary was prepared and placed in the docket, EPA-HQ-SFUND-1989-0008 on <https://www.regulations.gov>, and in the Regional repository listed in the **ADDRESSES** section.

For the Fort Wayne Reduction Dump site, the closing date for comments on the Notice of Intent to Partially Delete was August 17, 2020. Two public comments were received. One comment was from a nearby resident who thought inspections, maintenance and monitoring would be discontinued after the partial deletion. These activities will continue, as described in materials contained in the deletion docket. One public comment was received which was not related to the deletion of the site from the NPL. EPA still believes the deletion action is appropriate. A responsiveness summary was prepared and placed in the docket, EPA-HQ-SFUND-1986-0005, on <https://www.regulations.gov>, and in the Regional repository listed in the **ADDRESSES** section.

For the Macalloy Corporation site, the closing date for comments on the Notice of Intent to Partially Delete was August 26, 2020. One public comment was received stating if pollutants were found during a five-year review of the site, there should be joint and several liability on any party found responsible

for creating this pollution retroactively and groundwater should be monitored. EPA has a Consent Decree with the potentially responsible party group to conduct the response and groundwater is being monitored as part of the five-year review. EPA still believes the deletion action is appropriate. A responsiveness summary was prepared and placed in the docket, EPA-HQ-SFUND-2000-0006, on <https://www.regulations.gov>, and in the Regional repository listed in the **ADDRESSES** section.

For the Queen City Farms site, the closing date for comments on the Notice of Intent to Partially Delete was August 13, 2020. Three public comments were received. One comment supported the partial deletion. Another comment expressed concerns about burning chemicals at the site and expressed concerns that the cleanup level for polynuclear aromatic compounds (PAHs) was not protective, requesting that EPA evaluate whether the cleanup level for PAHs is still protective. EPA lowered the cancer potency factor for carcinogenic PAHs based on changes to the toxicity, so EPA believes the cleanup level chosen is protective. A third commenter was concerned about chemical unknowns and future land use. The Final Containment Cell area is limited to industrial use and institutional controls restrict use of the areas to industrial use. EPA still believes the deletion action is appropriate. A responsiveness summary was prepared and placed in the docket, EPA-HQ-SFUND-2005-0011, on

<https://www.regulations.gov>, and in the Regional repository listed in the ADDRESSES section.

For the Southeast Rockford Ground Water Contamination site (NPL listing is Southeast Rockford Gd Wtr Contamination site), the closing date for comments on the Notice of Intent to Partially Delete was July 23, 2020. One public comment was received which was not related to the deletion of the site from the NPL and EPA still believes the deletion action is appropriate. The comment and a memorandum documenting receipt of the comment were prepared and placed in the docket EPA-HQ-SFUND-1989-0008 on <https://www.regulations.gov>, and in the Regional repository listed in the ADDRESSES section.

For the U.S. Smelter & Lead Refining Inc. site, the closing date for comments on the Notice of Intent to Partially Delete was August 7, 2020. EPA received written or verbal public comments from the East Chicago Calumet Coalition and four individuals. EPA also received telephone calls during the comment period from four area residents requesting additional information about the partial deletion and their specific properties. The comments from the East Chicago Calumet Coalition and three residents opposed the deletion primarily based on potential effects of area groundwater contamination and the other portions of the site that EPA is still evaluating as part of an ongoing investigation at another area of the site not being partially deleted. One commenter opposed the deletion but did not include site specific information to support the opposition. The four phone callers were primarily requesting

additional information about the partial deletion and their specific properties; however, three of the callers verbally expressed support for EPA's proposal to delete their properties from the NPL. EPA still believes the deletion action is appropriate. A responsiveness summary was prepared and placed in the docket EPA-HQ-SFUND-2008-0577, on <https://www.regulations.gov>, and in the Regional repository listed in the ADDRESSES section.

For all other sites not specified above, no adverse comments were received.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 10, 2020.

Dana Stalcup,

Acting Office Director, Office of Superfund Remediation and Technology Innovation.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Amend Appendix B to part 300 by:

■ a. In Table 1 remove the entries for “CA”, “Jasco Chemical Co.” “Mountain View”; “MN”, “Fridley Commons Park Well Field”, “Fridley”; “MO”, “Annapolis Lead Mine” “Annapolis”; “MS”, “Red Panther Chemical Company”, “Clarksdale”; “NM” “Cimarron Mining Corp.”, “Carrizozo”; “OK”, “Tulsa Fuel and Manufacturing”, “Collinsville”, “WA”, “American Crossarm & Conduit Co.” “Chehalis”, and “WA”, “Northside Landfill”, “Spokane”.

■ b. In Table 1 revise the entries for “IL”, “Southeast Rockford Gd Wtr Contamination”, “Rockford”; “IN”, “Douglass Road/Uniroyal, Inc., Landfill”, “Mishawaka”; “IN”, “Fort Wayne Reduction Dump”, “Fort Wayne”; “IN”, “U.S. Smelter & Lead Refining Inc.”, “East Chicago”; “MA”, “Industri-Plex”, “Woburn”; “MT”, “Anaconda Co. Smelter”, “Anaconda”; “SC”, “Macalloy Corporation”, “North Charleston”, and “WA”, “Queen City Farms”, “Maple Valley”.

■ c. In Table 2 revise the entry for “AL”, “Redstone Arsenal (USARMY/NASA)”, “Huntsville”.

The revisions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
*	*	*	*
IL	Southeast Rockford Gd Wtr Contamination	Rockford	P
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka	P
IN	Fort Wayne Reduction Dump	Fort Wayne	P
IN	U.S. Smelter & Lead Refining Inc	East Chicago	P
MA	Industri-Plex	Woburn	P
MT	Anaconda Co. Smelter	Anaconda	P

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
SC	Macalloy Corporation	North Charleston	P
WA	Queen City Farms	Maple Valley	P

* P = Sites with partial deletion(s).

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes (a)
AL	Redstone Arsenal (USARMY/NASA)	Huntsville	P

[FR Doc. 2020–20402 Filed 9–29–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0074; FF09E21000 FXES11110900000 201]

RIN 1018–BD43

Endangered and Threatened Wildlife and Plants; Section 4(d) Rule for Trispot Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), adopt a rule under section 4(d) of the Endangered Species Act of 1973 (Act), as amended, for the trispot darter (*Etheostoma trisella*), a fish from Alabama, Georgia, and Tennessee. This rule provides measures that are necessary and advisable to conserve the species.

DATES: This rule is effective October 30, 2020.

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2018–0074 and at <https://www.fws.gov/southeast/>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2018–0074.

FOR FURTHER INFORMATION CONTACT: William Pearson, Field Supervisor, U.S.

Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208–B Main Street, Daphne, AL 36526; telephone 251–441–5870. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On October 4, 2017, we published in the **Federal Register** (82 FR 46183) a proposed rule to list the trispot darter as a threatened species under the Act (16 U.S.C. 1531 *et seq.*). On December 28, 2018, we published the following documents in the **Federal Register**: (1) The final rule listing the trispot darter as a threatened species (83 FR 67131), (2) the proposed rule to provide measures necessary and advisable to conserve the species under section 4(d) of the Act (a “4(d) rule”) for the species (83 FR 67185), and (3) the proposed rule to designate critical habitat for the species (83 FR 67190). Elsewhere in today’s **Federal Register**, we issue a final rule to designate critical habitat for the trispot darter. Please see these documents for additional previous Federal actions affecting the trispot darter.

Summary of Changes From the Proposed Rule

This final rule incorporates one change to our proposed rule based on the comments we received. Specifically, we replaced the term “highest-standard best management practices” with the term “State best management practices.”

In addition, in this rule, we change the way in which the provisions of the 4(d) rule for the trispot darter appear in 50 CFR 17.44 from what we proposed;

here, we do not refer to the prohibitions and provisions set forth in section 9(a)(1) of the Act. Instead, we refer to the prohibitions set forth at 50 CFR 17.21, which apply to endangered species. However, the substance of the prohibitions, and exceptions to those prohibitions, in the 4(d) rule for the trispot darter have not changed.

Background

The trispot darter is a small-bodied, freshwater fish found in the Coosa River System, above the fall line in the Ridge and Valley of Alabama, Georgia, and Tennessee. It is a migratory species that uses distinct breeding and nonbreeding habitats. From approximately April to October, the species inhabits its nonbreeding habitat, which consists of small to medium river margins and lower reaches of tributaries with slower velocities. After October, trispot darters move from the main channels into tributaries, eventually reaching adjacent seepage areas where they congregate and remain for the duration of spawning, until approximately late April. Breeding sites are intermittent seepage areas and ditches with little to no flow and shallow depths (12 inches (30 centimeters) or less).

For a full summary of species information, please refer to the October 4, 2017, proposed listing rule (82 FR 46183) and the species status assessment (SSA) report for the trispot darter (Service 2018, entire). Both documents are available at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2017–0063, and on the Service’s South Atlantic-Gulf Region website at <https://www.fws.gov/southeast/>.

Summary of Comments and Recommendations

On December 28, 2018, we proposed a 4(d) rule for the trispot darter (83 FR 67185). We accepted public comments on the proposed 4(d) rule for 60 days, ending February 26, 2019. During the comment period, we received 13 comments addressing the proposed 4(d) rule. Eight of the comments supported the general protections of the proposed 4(d) rule, and five explicitly expressed support for our conservation strategy of sustainable forest management and best management practices. None of the comments opposed the proposed 4(d) rule. All substantive information provided during the comment period has either been incorporated directly into this final rule or is addressed in our responses below.

State Comments

Comment: The Alabama Forestry Commission commented that limiting silvicultural and forest management activities to May 1 through December 31 is concerning and may be unnecessary with BMP compliance.

Our Response: The 4(d) rule identifies actions that are prohibited in order to protect the darter, as well as actions that are excluded from those prohibitions, including certain forest management activities. Because trispot darters spawn from January through April, making this the most sensitive period of the species' lifecycle, the exclusions for forest management activities in spawning habitat apply only from May 1 through December 31. During the spawning period, the exclusions do not apply in areas where spawning habitat is present; however, in non-spawning habitat, the exclusions apply year-round. In some cases, silvicultural and forest management activities may still be undertaken in areas that are spawning habitat during the spawning season, as long as there is consultation with the Service under section 7 of the Act or a conservation agreement under section 10 of the Act. Performing silvicultural and forest management activities in the range of the trispot darter between May 1 and December 31, while applying State best management practices, will not adversely affect, and may provide conservation benefits for, the species.

Public Comments

Comment: In regard to silviculture practices or forest management activities, we received three public comments and one comment from the Alabama Forestry Commission concerning our use of the term "highest-standard best management practices."

Specifically, one public commenter requested clarification of the term, and two other public commenters requested amending the term to "State best management practices." The State agency commented that Alabama's best management practices for forestry clearly state that stream management zones, stream crossings, and forest roads must always be sufficient in design and filtering capacity to not impact water quality and passage of aquatic species. Thus, complying with Alabama's best management practices should ensure water quality and the reference for the need to "implement the highest-standard best management practices" is not needed.

Our Response: Best management practices can change over time as new scientific and commercial information becomes available. Therefore, rather than specifying a particular set of best management practices, we interpreted "highest-standard best management practices" to refer to the most stringent ones available at the time of project implementation. To clarify the terminology, we removed the term "highest-standard" and now refer to these practices (the most stringent ones currently available) as "State best management practices," which constitute the highest standard.

Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence 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 statutory language like "necessary and advisable" 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, the second sentence of 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), in the case of fish or wildlife, or 9(a)(2), in the case of plants." Thus, the combination of the two sentences of section 4(d) of the Act provide the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the

threatened species. The second sentence 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 upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of 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 upheld 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" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising its authority under section 4(d), the Service has developed a final rule for the trispot darter that is designed to address the species' 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 final 4(d) rule 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 trispot darter. As discussed in the final listing rule (83 FR 67131; December 28, 2018), the Service has concluded that the trispot darter is likely to become in danger of extinction within the foreseeable future primarily due to threats that degrade instream habitat and reduce water quality and water quantity, all which reduce connectivity between populations. The provisions of this final 4(d) rule promote conservation of the trispot darter by encouraging management of stream systems and the landscapes they drain while also meeting land use management considerations. The provisions of this final 4(d) rule are one of many tools that the Service will use

to promote the conservation of the trispot darter.

Provisions of the 4(d) Rule for Trispot Darter

This final 4(d) rule provides for the conservation of the trispot darter by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce. We also include several standard exclusions to these prohibitions, which are set forth under Regulation Promulgation, below, as well as some species-specific exclusions.

As discussed in the final listing rule (83 FR 67131) a range of natural and anthropogenic factors that affect aquatic systems may impact the status of the trispot darter. The largest threat to the future viability of the species is habitat degradation from stressors that influence four habitat elements: water quality, water quantity, instream habitat, and habitat connectivity. These stressors include hydrologic alteration, sedimentation, loss of connectivity, loss of riparian vegetation, contaminants entering the water system due to agricultural activities (such as excessive poultry litter and livestock entering streams), and urbanization within the watersheds inhabited by the species. Regulating these activities would reduce their combined negative effects, providing for the conservation of the trispot darter by helping to preserve remaining populations.

Conservation actions that benefit the trispot darter include habitat restoration and protection. Additionally, conservation may be achieved through augmentation of populations to increase their size (number of individuals), which increases resiliency to adverse events such as storms and droughts, inadvertent runoff of pollutants and sediment, and contaminant spills. This rule provides exceptions from the Act's incidental take prohibitions, accommodating species restoration efforts by State wildlife agencies, channel restoration projects, and streambank stabilization projects. Further, this rule enhances habitat protection, by providing exceptions to incidental take provisions for silviculture and forest management that implement best management practices; transportation projects that provide for fish passage in waters occupied by the trispot darter; and projects carried out under the Working Lands for Wildlife

program of the Natural Resources Conservation Service, U.S. Department of Agriculture. The provisions in this rule for channel restoration and habitat protection can occur only between May 1 and December 31, to avoid the trispot darter's spawning period, when seasonal spawning areas are wetted. This curtails the likelihood of incidental take occurring. Although the exceptions for certain activities may result in some minimal level of harm or temporary disturbance to the trispot darter, overall, these activities benefit the species by contributing to conservation and recovery.

The provisions in this rule are necessary and advisable because the species needs active conservation to improve the quality of its habitat and, absent protections, the species is likely to become in danger of extinction within the foreseeable future. These provisions can encourage cooperation by landowners and other affected parties in implementing conservation measures. This allows for use of the land while at the same time ensuring the preservation of suitable habitat and minimizing impact on the species.

Under the Act, "take" means 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 intentional and incidental take under this 4(d) rule will help preserve the species' remaining populations; enable beneficial management actions to occur; 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 Services 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 trispot darter that may result in otherwise prohibited take without additional authorization.

Nothing in this 4(d) rule changes 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 trispot darter. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. 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 final 4(d) rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that this rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

On December 28, 2018, we published the final rule listing the trispot darter as a threatened species (83 FR 67131). In this issue of the **Federal Register**, we publish (1) this final rule to establish a 4(d) rule for the trispot darter, and (2) a final rule designating critical habitat for the species. Any economic impacts resulting from these three final rules under the Act stem from listing the trispot darter and designating its critical habitat rather than this 4(d) rule. This 4(d) rule will not add to any costs due to section 7 consultation for the species and its critical habitat because, while this rule establishes prohibitions on acts with regard to the trispot darter, it also provides exceptions to those prohibitions. These exceptions will reduce the amount of time, and therefore costs, to complete consultations because the effects of the activities excepted by the 4(d) rule will not require analysis during those consultations. Therefore, a final regulatory flexibility analysis is not required.

Executive Order 13771

This rule is not an Executive Order (E.O.) 13771 (“Reducing Regulation and Controlling Regulatory Costs”) (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Energy Supply, Distribution or Use (Executive Order 13211)

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, or use. This rule will not have any significant effect, nor is it likely to have any effect, on energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

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.”

This rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this rule does not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this 4(d) rule, with limited exceptions, maintains the regulatory status quo regarding activities currently allowed under the Endangered Species Act. A takings implication assessment is not required.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this 4(d) rule does not have significant Federalism effects. A federalism summary impact statement is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government.

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 issue this 4(d) rule in accordance with the provisions of the Act. To assist the public in understanding the conservation needs of the species, the rule identifies the prohibitions and exclusions to those prohibitions that are necessary and advisable to the conservation of the species.

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 prepared a final environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969. For information on how to obtain a copy of the final environmental assessment, see **ADDRESSES**, above.

Government-to-Government Relationships 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. We have determined that no tribal interests will be affected by this rule.

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 Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service’s Species Assessment

Team and the Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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 in paragraph (h) by revising the entry for “Darter, trispot” under FISHES in the List of Endangered and Threatened Wildlife 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
Fishes				
Darter, trispot	<i>Etheostoma trisella</i>	Wherever found	T	83 FR 67131, 12/28/2018; 50 CFR 17.44(q); 4d 50 CFR 17.95(e). ^{CH}

■ 3. Amend § 17.44 by adding paragraph (q) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(q) Trispot darter (*Etheostoma trisella*). (1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the trispot darter. Except as provided under paragraph (q)(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 the trispot darter:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(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 issued 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) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently

occupied and unoccupied areas within the historical range of the species.

(B) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known trispot darter spawning habitat, that take place between May 1 and December 31. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large

imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(C) Streambank stabilization projects that utilize bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(D) Silviculture practices and forest management activities that:

(1) Implement State best management practices, particularly for streamside management zones, for stream crossings, for forest roads, for erosion control, and to maintain stable channel morphology; or

(2) Remove logging debris or any other large material placed within natural or artificial wet weather conveyances or ephemeral, intermittent, or perennial stream channels; and

(3) When such activities involve trispot darter spawning habitat, are carried out between May 1 and December 31.

(E) Transportation projects that provide for fish passage at stream crossings that are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within spawning habitat, if such habitat is affected by the activity.

(F) Projects carried out in the species' range under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(1) Do not alter habitats known to be used by the trispot darter beyond the fish's tolerances; and

(2) Are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within its spawning habitat, if such habitat is affected by the activity.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set

forth at § 17.21(d)(2) for endangered wildlife.

* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020-19109 Filed 9-29-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2018-0073; FF09E21000 FXES11110900000 201]

RIN 1018-BD40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Trispot Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the trispot darter (*Etheostoma trisella*) under the Endangered Species Act of 1973 (Act), as amended. We are designating as critical habitat for this species six units, totaling approximately 175.4 miles (282.3 kilometers) of streams and rivers and 9,929 acres (4,018 hectares), in Calhoun, Cherokee, Etowah, and St. Clair Counties in Alabama; Gordon, Murray, and Whitfield Counties in Georgia; and Bradley and Polk Counties in Tennessee. This rule extends the Act's protections to the trispot darter's designated critical habitat.

DATES: This rule is effective October 30, 2020.

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov> and <http://www.fws.gov/daphne>. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>.

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> at Docket No. FWS-R4-ES-2018-0073 and at the Alabama Ecological Services Field Office's website (<https://www.fws.gov/daphne>). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the

Fish and Wildlife Service website and may also be included in the preamble and at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: William Pearson, Field Supervisor, U.S. Fish and Wildlife Service, telephone 251-441-5184. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973 (Act), as amended, if we determine that a species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. We published a final rule to list the trispot darter as a threatened species on December 28, 2018 (83 FR 67131). Designations of critical habitat can be completed only by issuing a rule.

What this document does. This rule finalizes a designation of critical habitat for the trispot darter of approximately 175.4 miles (282.3 kilometers) of streams and rivers and 9,929 acres (4,018 hectares), in Calhoun, Cherokee, Etowah, and St. Clair Counties in Alabama; Gordon, Murray, and Whitfield Counties in Georgia; and Bradley and Polk Counties in Tennessee.

The basis for our action. Under section 4(a)(3) of the Act, if we determine that any species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate 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. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. 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.

The critical habitat we are designating in this rule, consisting of six units comprising approximately 175.4 miles (282.3 kilometers) of streams and rivers, in an area of 9,929 acres (4,018 hectares), constitutes our current best assessment of the areas that meet the definition of critical habitat for the trispot darter.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the trispot darter. We published the announcement of, and solicited public comments on, the draft economic analysis (DEA; 83 FR 67190, December 28, 2018). Because we received no comments on the DEA, we adopted the DEA as a final version.

Peer review and public comments. We considered all comments and information we received from the public and peer reviewers during the comment period on the proposed designation of critical habitat for the trispot darter and the associated DEA (83 FR 67190; December 28, 2018).

Previous Federal Actions

On October 4, 2017, we published a proposed rule in the **Federal Register** (82 FR 46183) to list the trispot darter as a threatened species under the Act (16 U.S.C. 1531 *et seq.*). On December 28, 2018, we published a final rule (83 FR 67131) to list the species as a threatened species. On the same date, we published a proposed section 4(d) rule for the trispot darter (83 FR 67185) and a proposed critical habitat rule for the species (83 FR 67190). Please refer to these rules for a detailed description of previous Federal actions concerning this species. Elsewhere in today's **Federal Register**, we issue a final rule under section 4(d) of the Act that provides measures necessary and advisable for the conservation of the threatened trispot darter.

Summary of Changes From the Proposed Rule

This final rule incorporates changes to our proposed rule (83 FR 67190; December 28, 2018) based on the comments we received, as discussed above under Summary of Comments and Recommendations. We made changes to the unit sizes in the proposed critical habitat rule as a result of a public comment we received. Based on our mapping analysis of elevations

where spawning has occurred, we omitted areas from Unit 1 in this critical habitat designation that are likely to be perennially dry, and we added language to the rule to clarify that perennially dry areas that are located within the critical habitat boundaries are not being designated as critical habitat. Our analysis also revealed other areas that we removed from critical habitat in Unit 4 (Mill Creek). These areas in Unit 4 are not suitable for seasonal spawning, because a large portion (86 percent) is occupied by large commercial structures and the remaining portion contains straightened channels with intervening segments enclosed in culverts. In addition to the altered spawning areas, tributaries to Mill Creek are not included in this final critical habitat designation because they also have been heavily altered. The mapping analysis to more precisely identify spawning areas and removal of developed areas in the Mill Creek unit reduced the total amount of critical habitat we are designating, from 16,735 acres (ac) (6,772 hectares (ha)) in the proposed rule, to 9,929 ac (4,018 ha) in this final rule.

Supporting Documents

We prepared a species status assessment (SSA) report for the trispot darter. Written in consultation with species experts, the SSA report represents the best scientific and commercial data available concerning the status of the trispot darter, including its habitat needs, and impacts of past, present, and future factors (both negative and beneficial) affecting the species and its habitat (Service 2018, entire). 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, the SSA report underwent independent peer review by scientists with expertise in fish biology, habitat management, and stressors (factors negatively affecting the species) to the trispot darter. The purpose of peer review is to ensure that our listing determinations and critical habitat designations are based on scientifically sound data, assumptions, and analyses. The SSA report (Service 2018, entire), the proposed and final listing rules (82 FR 46183, October 4, 2017; 83 FR 67131, December 28, 2018, respectively), the proposed critical habitat rule (83 FR 67190; December 28, 2018), this final rule, and other materials relating to this rulemaking can be found on the Service's Southeast Region website at <https://www.fws.gov/southeast/> and at

<http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0073.

Summary of Comments and Recommendations

In the proposed rule published on December 28, 2018 (83 FR 67190), we requested that all interested parties submit written comments on the proposal by February 26, 2019. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Chattanooga Times Free Press (2/8/19), The Daily Citizen (2/08/19), Daily Home (2/13/19), and St. Clair Times (2/14/19). We did not receive any requests for a public hearing. During the open comment period, we received 27 public comments on the proposed rule to designate critical habitat for the trispot darter; a majority of comments supported the designation of critical habitat, and none opposed the designation. However, some commenters provided suggestions on how we could refine or improve the designation, and all substantive information provided to us during the comment period has been incorporated directly into this final rule or is addressed below.

(1) Comment: Two commenters sought clarification on how designated critical habitat will affect agriculture and development activities.

Our Response: Private agricultural and development activities on private lands will not be affected by designated critical habitat, because 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. An action with a Federal nexus, meaning one that is authorized, funded, or carried out by a Federal agency, would, on private lands, be subject to consultation under section 7 of the Act. However, routine agricultural and forestry activities on private lands are not likely to have a Federal nexus and require consultation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of, or access to, the designated areas whether private, tribal, State, or Federal. Critical habitat designation also does not establish a refuge, wilderness, reserve, preserve, or other conservation area, and does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. In addition, critical habitat designation does not establish specific land management standards or prescriptions

for private parties, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat.

(2) *Comment:* One commenter recommended that we reevaluate Unit 1 of proposed critical habitat because, as proposed, it included upland areas that do not provide the physical and biological features that support the trispot darter. The commenter suggested that we use finer resolution data to undertake an analysis that more precisely delineates critical habitat for the species. The same commenter requested that we provide additional language explaining that perennially dry lands inadvertently left inside critical habitat boundaries due to mapping resolution constraints are not being designated as critical habitat.

Our Response: Finer resolution data are not consistently available throughout the range of the trispot darter and could not be used to more precisely delineate the habitat containing the physical and biological features necessary for the species to spawn. In the absence of finer resolution data, to refine our critical habitat maps and exclude upland areas that are not suitable habitat because they are dry perennially, we used mean elevation data; specifically, we analyzed the mean elevation where there are records for spawning trispot darters and, from our analysis, we include in the designated critical habitat all areas of the proposed critical habitat that are up to one standard deviation greater than the calculated mean elevation for trispot darter spawning occurrences. This approach removed much of the upland areas originally proposed as critical habitat in Unit 1 that are likely perennially dry and lacking any of the physical and biological features necessary for the species. The analysis also resulted in revisions to proposed Unit 4, as discussed above in Summary of Changes from the Proposed Rule. In this final rule, we include language in the description of the critical habitat units to specify that perennially dry areas not identified as such by the mapping analysis are not being designated as critical habitat (see Final Critical Habitat Designation, below).

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 (*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 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 within an area, we focus on the specific features that 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 may 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. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of

listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. 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 other 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, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

On August 27, 2019, we published a final rule in the **Federal Register** (84 FR 45020) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on September 26, 2019, but, as stated under **DATES** in that rule, the amendments it sets forth apply to rules for which a proposed rule was published after September 26, 2019. We published our proposed critical habitat designation for the trispot darter on December 28, 2018 (83 FR 67190); therefore, the amendments set forth in the August 27, 2019, final rule at 84 FR 45020 do not apply to this final designation of critical habitat for the trispot darter.

Prudence and Determinability

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. In our proposed critical habitat rule (83 FR 67190; December 28, 2018), we found that designating critical habitat is both prudent and determinable. In this final rule, we reaffirm those determinations.

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 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 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 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.

The trispot darter is a freshwater fish that occurs in the Coosa River system in the Ridge and Valley ecoregion of Alabama, Georgia, and Tennessee. It is a migratory species that uses distinct breeding and nonbreeding habitats. From approximately April to October, the species occupies its nonbreeding habitat, which consists of small to medium margins of rivers and lower reaches of tributaries with slower velocities. It is associated with detritus, logs, and stands of water willow, and with a substrate that consists of small cobbles, pebbles, gravel, and often a fine

layer of silt. During low flow periods, the darters move away from the peripheral zones and toward the main channel; edges of water willow beds, riffles, and pools; and mouths of tributaries.

Migration into spawning areas begins in approximately late November or early December, with fish moving from the main channels into tributaries and eventually reaching adjacent seepage

areas where they will congregate and remain for the duration of spawning, until approximately late April. Breeding sites are intermittent seepage areas and ditches with little to no flow; shallow depths (12 inches (30 centimeters) or less); moderate leaf litter covering mixed cobble, gravel, sand, and clay; a deep layer of soft silt over clay; and emergent vegetation. Additionally, breeding sites possess channels that

maintain base flow throughout the winter and early spring.

Trispot darters predominantly feed on mayfly nymphs and midge larvae and pupae. A thorough review of the life history and ecology of the trispot darter is presented in the SSA report (Service 2018, entire). A summary of the resource needs of the trispot darter is provided below in Table 1.

TABLE 1—RESOURCE NEEDS FOR THE TRISPOD DARTER TO COMPLETE EACH LIFE STAGE

Life stage	Resources needed
Fertilized eggs	Ephemeral streams/ditches connected to nonbreeding habitat with adequate water quality; vegetation, rocks for adhesive eggs; eggs submerged on vegetation and/or rocks for approximately 30 days at 53 degrees Fahrenheit (°F) (12 degrees Celsius (°C)).
Larvae	Ephemeral streams/ditches connected to nonbreeding habitat with adequate water quality; low predation, disease, and environmental stress; flushing rain events to reach lower stream reaches; 41 days to reach juvenile stage.
Juveniles	Flowing water with good water quality; low predation, disease, and environmental stress; adequate food availability.
Nonbreeding adults (mid-April to mid-October).	Clear, flowing water in shallow pools and backwaters in main channel with good water quality, with a fine layer of silt and/or debris, leaf litter; adequate food availability.
Breeding adults (late November to late April).	Flowing water with adequate water quality, adequate flow to connect to breeding areas; clean structure (vegetation, rock, substrate); appropriate male to female demographics; appropriate spawning temperatures.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of trispot darter from studies of this species' habitat, ecology, and life history. Additional information can be found in the October 4, 2017, proposed listing rule (82 FR 46183); the December 28, 2018, final listing rule (83 FR 67131); the December 28, 2018, proposed critical habitat rule (83 FR 67190); and the SSA report (Service 2018, entire). We have determined that the following physical or biological features are essential to the conservation of trispot darter:

(1) Geomorphically stable, small to medium streams with detritus, woody debris, and stands of water willow (*Justicia americana*) over stream substrate that consists of small cobble, pebbles, gravel, and fine layers of silt; and intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(2) Adequate seasonal water flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time) necessary to maintain appropriate benthic habitats and to maintain and create connectivity between permanently flowing streams with associated streams that hold water from November through April, providing connectivity between the darter's spawning and summer areas.

(3) Water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) Prey base of aquatic macroinvertebrates.

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 trispot darter may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment); (2) nutrient pollution from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) improper forest management or silviculture activities that remove large areas of

forested wetlands and riparian systems; (5) culvert and pipe installation that creates barriers to movement; (6) changes and shifts in seasonal precipitation patterns as a result of climate change; (7) other watershed and floodplain disturbances that release sediments or nutrients into the water or fill suitable spawning habitat; and (8) creation of reservoirs that convert permanently flowing streams and/or streams that hold water from November through April into lake or pond-like (lentic) environments.

Management activities that could ameliorate these threats include, but are not limited to, use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank-side destruction; protection of riparian corridors and suitable spawning habitat; 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 stream systems; placement of culverts or bridges that accommodate fish passage; 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.

The current distribution of the trispot darter is reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring there are adequate numbers of fish in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as floods, cannot simultaneously affect all known populations. Rangelwide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this critical habitat designation.

Sources of data for this critical habitat include multiple databases maintained by universities and State agencies in Tennessee, Alabama, and Georgia, as well as numerous survey reports on streams throughout the species' range. Other sources of available information on habitat requirements for this species include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2018, entire).

Areas Occupied at the Time of Listing

This critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it focuses on currently occupied streams and rivers within the historical range that have retained the necessary physical or biological features that will allow for the maintenance and expansion of existing populations. For the purposes of critical habitat designation, we determined a unit to be occupied if it contains recent (*i.e.*, observed in the past 10 years (since 2007), based on the data available for the SSA analysis) observations of trispot darter. Collection records were compiled and provided to us by State partners funded under a concurrent section 6 status assessment for the trispot darter. Collection records were obtained through the website FISHNET2 (an online repository of ichthyological museum data) or directly from institutions. To delineate spawning areas for trispot darter, we identified

waterways where the trispot darter was observed from November to April between the years 2007 and 2017. We assume these observations represented fish in or near spawning habitat within the timeframe. We based this assumption on the knowledge that this short-lived migratory species will stage near spawning areas in pre-spawning congregations and that both spawning and non-spawning individuals will make a migration.

We considered areas of low topographic variation at lower elevations as exhibiting topographic characteristics that support recharge of a shallow soil water table, slow release of water into breeding channels, and connectivity between ephemeral breeding channels and permanent trispot darter summer habitat. These areas support the essential physical and biological features that allow for adequate seasonal water flows, the hydrologic flow regime that maintains appropriate trispot habitat, and connectivity between streams in the winter. Areas of low topographic variation generally have slower stream velocities and retain water for longer duration (*i.e.*, have a less "flashy" hydrograph), in order to maintain necessary benthic habitat and stream substrate. Areas at lower elevation interact with permanent streams and rivers, and will be accessible to trispot darters attempting to migrate into adjacent ephemeral spawning streams.

To identify areas with both low elevation and low topographic variation, we conducted a geographic information system (GIS) analysis using a 30-meter digital elevation model (DEM). We analyzed the areas in Alabama separately from areas in the upper Coosa River basin in Tennessee and Georgia owing to natural topographic differences between the two regions, with the upper Coosa River basin having greater topographic relief and higher elevations than areas where the species occurs in Alabama. Low elevation for this analysis was defined as one standard deviation above the mean elevation at which spawning trispot darters were observed. Therefore, elevation ranged from 558 to 790 feet (ft) (170 to 241 meters (m)). We used roughness, calculated as described in the proposed critical habitat rule (83 FR 67190; December 28, 2018), as a measure of topographic variation. Subsequently, we produced a map of potential spawning habitat by overlaying the spawning elevation and roughness layers.

Finally, when delineating critical habitat that included spawning habitat, we considered the dispersal ability of the trispot darter. Trispot darters have

been recorded to travel approximately 6,000 ft (1,829 m) during a spawning season. Therefore, we only delineate lands that exhibit topographic characteristics we consider suitable for trispot darter spawning habitat that are within 6,000 ft (1,829 m) of a trispot darter observation between November and April in the years 2007 to 2017.

The following rivers and streams meet the criteria described above and are considered occupied by the species at the time of listing where the essential physical and biological features are found: Big Canoe Creek, Ballplay Creek, Conasauga River, Mill Creek, Coahulla Creek, and Coosawattee River.

Areas Outside the Geographical Area Occupied at the Time of Listing

We may designate as critical habitat areas outside the geographical area occupied as listing only if we determine that such areas are essential for the conservation of the species. We may consider unoccupied areas to be essential only where we determine that a designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species.

We are not designating any areas outside the geographical area currently occupied by the species because we did not find any unoccupied areas that were essential for the conservation of the species. Protection of six moderately or highly resilient management units across the physiographic representation of the range, all of which are currently occupied by the species, will sufficiently reduce the risk of extinction. Improving the resiliency of populations in the currently occupied streams will likely increase viability to the point that the protections of the Act are no longer necessary.

Critical Habitat Maps

When determining 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 trispot darter. The scale of the maps we prepare 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 rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification

unless the specific action will affect the physical or biological features in the adjacent critical habitat. We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 2018. We are not designating any areas outside the geographical area occupied by the species at the time of listing.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented below under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units, below. 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-R4-ES-2018-0073.

Final Critical Habitat Designation

We are designating 175.4 river or stream miles (mi) (282.3 kilometers (km)) and 9,929 acres (ac) (4,018 hectares (ha)) in six units as critical habitat for the trispot darter. These six critical habitat areas, described below, constitute our current best assessment of areas that meet the definition of critical habitat for the trispot darter. All of these areas are in the Coosa River system in Alabama, Georgia, and Tennessee. Table

2 shows the name, land ownership, approximate stream miles, and acres of the designated units for the trispot darter. Per State regulations (Alabama Code section 9–11–80, Tennessee Code Annotated section 69–1–101, and Georgia Code section 52–1–31), navigable waters are considered public rights-of-way. Lands beneath the navigable waters included in this rule are owned by the States of Alabama, Georgia, or Tennessee. Ownership of lands beneath nonnavigable waters included in this rule are determined by riparian land ownership. As discussed below, riparian lands along the waters described are owned by either private, State, or Federal entities.

TABLE 2—OWNERSHIP OF CRITICAL HABITAT UNITS FOR THE TRISPO T DARTER

Unit	Ownership * of river or stream miles (kilometers)					Ownership of acres (hectares)	
	Private	Local	State	Federal	Total	Private	Total
1. Big Canoe Creek	41 (66)	0	0	0	41(66)	5,286 (2,139)	5,286 (2,139)
2. Ballplay Creek	17 (27)	0	0	0	17 (27)	2,527 (1,023)	2,527 (1,023)
3. Conasauga River	54.6 (87.8)	0	2.4 (3.9)	0	57 (92)	1,400 (567)	1,400 (567)
4. Mill Creek	8.1 (13.0)	1.3 (2.1)	0	0	9.4 (15.1)	0	0
5. Coahulla Creek	26 (42)	0	0	0	26 (42)	716 (290)	716 (290)
6. Coosawattee River ..	24.2 (39.0)	0	0.3 (0.6)	0.42 (0.68)	25 (40.2)	0	0
Totals	170.9 (275)	1.3 (2.1)	2.7 (4.5)	0.42 (0.68)	175.4 (282.3)	9,929 (4,018)	9,929 (4,018)

* Adjacent riparian ownership is reported under river or stream miles.
Note: Measurements may not sum due to rounding.

There may be some small perennially dry areas misidentified by our digital elevation model analysis as spawning habitat that are included inside critical habitat boundaries shown on the maps. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule are not being designated as critical habitat.

Below, we present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the trispot darter. All units are currently occupied by the darter and contain the physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection.

Unit 1: Big Canoe Creek

Unit 1 consists of 41 stream mi (66 km) in St. Clair County, Alabama, from approximately 3.5 mi (5.6 km) upstream of Pinedale Road, west of Ashville, Alabama, to approximately U.S. Highway (Hwy.) 11. In addition to Big Canoe Creek, Unit 1 includes the westernmost portion of Little Canoe Creek to State Hwy. 174 and all of its associated tributaries. Unit 1 also includes all low-elevation areas (5,286 ac (2,139 ha)) containing channels that

hold water from November through April beginning 0.5 mi (0.8 km) upstream of County Road 31 upstream to the U.S. Hwy. 11 crossing with Big Canoe Creek, approximately 0.70 miles (1.1 km) downstream of the Interstate 59 (I-59) crossing with the Left Hand Prong Little Canoe Creek, and the State Hwy. 174 crossing with Little Canoe Creek and Stovall Branch. The low-elevation riparian areas that hold water seasonally in Unit 1 are privately owned, except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 1 to alleviate impacts from stressors that have led to the degradation of the habitat, including roadside erosion, urban development, fish barriers, and unstable stream banks. Livestock accessing streams and riparian buffers have led to high levels of sedimentation, siltation, contamination, and nutrient-loading, as well as destabilized stream banks.

Unit 2: Ballplay Creek

Unit 2 consists of 17 stream mi (27 km) of Ballplay Creek in Etowah, Cherokee, and Calhoun Counties, Alabama, and 2,527 ac (1,023 ha) of

ephemeral spawning habitat. Unit 2 begins upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately at County Road 32, and continues upstream approximately to the U.S. Hwy. 278 crossing over Ballplay Creek in Calhoun County, Alabama. Unit 2 includes all low-elevation areas (2,527 ac (1,023 ha)) containing channels that hold water from November through April beginning upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately 0.60 mi (1 km) southwest of County Road 32 and extending upstream to the confluence of Ballplay and Little Ballplay Creeks and to the west along Rocky Ford Road and Alford Road. The spawning habitat in Unit 2 is privately owned except for bridge crossings and road easements, which are owned by the State or Counties. Additional special management considerations or protection may be required within Unit 2 because entrenchment and channelization have altered the channel and may degrade spawning habitat and reduce floodplain access.

Unit 3: Conasauga River

Unit 3 consists of 57 stream mi (92 km) and 1,400 ac (567 ha) of ephemeral wetland spawning habitat in Whitfield and Murray Counties, Georgia, and Polk and Bradley Counties, Tennessee. Unit 3 begins in the Conasauga River upstream of the mouth of Coahulla Creek and continues upstream to the mouth of Minneawauga Creek.

Unit 3 also includes: Mill Creek from its confluence with the Conasauga River in Bradley County, Tennessee, upstream to the first impoundment on Mill Creek approximately at Green Shadow Road SE; Old Fort Creek from Ladd Springs Road SE in Polk County, Tennessee, to its confluence with Mill Creek in Bradley County, Tennessee; and Perry Creek from its headwaters (approximately 0.35 mi (0.6 km) upstream of Tennga Gregory Road) to its confluence with the Conasauga River in Murray County, Georgia, and both of its tributaries. Unit 3 includes all low-elevation areas (1,400 ac (567 ha)) containing channels that hold water from November through April, beginning from the confluence of the Conasauga River and Shears Branch (west of U.S. Hwy. 411 in Polk County, Tennessee) to approximately 0.30 mi (0.5 km) downstream of the confluence of the Conasauga River and Perry Creek; Mill Creek from Hicks Tanyard Road downstream to its confluence with the Conasauga River; Old Fort Creek from Hicks Tanyard Road to its confluence with Mill Creek; and Perry Creek. The ephemeral wetland areas surrounding the river in this unit include a combination of private ownership, conservation easements, and State Natural Areas. The easements are held by Georgia Department of Transportation, Georgia Department of Natural Resources, and Georgia-Alabama Land trust.

Additional special management considerations or protection may be required within the Conasauga River Unit to reduce impacts from pollutants from agricultural runoff, construction of farm ponds that destroy spawning habitat, development, erosion, sedimentation, and dams and other barriers to dispersal.

Unit 4: Mill Creek

Unit 4 consists of 9.4 stream mi (15.1 km) of Mill Creek in Whitfield County, Georgia. The land surrounding the river in this unit is both in private ownership and owned by the City of Dalton, Georgia. Unit 4 begins at the confluence of Mill Creek with Coahulla Creek and continues upstream along Mill Creek for

approximately 9.4 mi (15.1 km) to the U.S. Hwy. 41 crossing.

Additional special management considerations or protection may be required within Unit 4 to address pollutants from agricultural runoff, agricultural ditching, and the construction of ponds that remove potential spawning habitat. Sediment loading and excessive livestock fecal contamination have degraded water quality and also require special management considerations.

Unit 5: Coahulla Creek

Unit 5 consists of 26 stream mi (42 km) of Coahulla Creek and 716 ac (290 ha) of ephemeral spawning habitat in Whitfield County, Georgia, and Bradley County, Tennessee. Unit 5 begins immediately upstream of the Prater Mill dam upstream of State Hwy. 2 in Georgia. The unit continues upstream for approximately 26 mi (42 km) to Ramsey Bridge Road SE and includes ephemeral wetland habitat from 0.5 mi (0.8 km) downstream of Hopewell Road to approximately 0.5 mi (0.8 km) upstream of McGaughey Chapel Road. The ephemeral spawning habitat surrounding the river in this unit is privately owned except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 5 to address pollutants from agricultural runoff, agricultural ditching, and the construction of farm ponds that remove spawning habitat. Sediment loading and excessive livestock fecal contamination have degraded water quality and also require special management considerations.

Unit 6: Coosawattee River

Unit 6 consists of 25 stream mi (40.2 km) of the Coosawattee River beginning at the confluence with the Conasauga River in Gordon County, Georgia. The unit continues upstream to Old Highway 411 downstream of Carters Lake Reregulation Dam in Murray County, Georgia. The ephemeral spawning habitat surrounding the river in this unit is a mix of State, private, and Federal (U.S. Army Corps of Engineers) ownership.

Additional special management considerations or protection may be required within Unit 6 to address erosion and sedimentation from urban runoff and development, rural unpaved roads, dam construction and use, and agriculture, leading to impairment of water quality.

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 that 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' 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, critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, critical habitat.

When we issue a biological opinion concluding that a project is likely to 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 destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (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 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 reinstate 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 reinstate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the “Adverse Modification” Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and

provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, and water withdrawal. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the trispot darter by decreasing or altering seasonal flows to levels that would adversely affect the species’ ability to complete its life cycle.

(2) Actions that would significantly alter water chemistry or quality. Such activities could include, but are not limited to, release of chemicals (including pharmaceuticals, metals, herbicides, and pesticides) or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the trispot darter and result in direct or cumulative adverse effects to individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the trispot darter by increasing the sediment deposition to levels that would adversely affect the species’ ability to complete its life cycle.

(4) Actions that would significantly increase eutrophic conditions. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could result in excessive nutrients and algae filling streams and reducing habitat, degrading water quality from excessive nutrients and during algae

decay, and decreasing oxygen levels below the tolerances of the trispot darter.

(5) Actions that would significantly alter channel morphology or geometry, or decrease connectivity. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the trispot darter and its habitats. These actions could also lead to increased sedimentation and degradation in water quality to levels beyond the tolerances of the trispot darter.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, or introduction of other species that compete with or prey on the trispot darter. Possible actions could include, but are not limited to, stocking of nonnative fishes and crayfishes, stocking of sport fish, or other related actions. These activities could introduce parasites or disease; result in direct predation or direct competition; or affect the growth, reproduction, and survival of the trispot darter.

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 final critical habitat designation for the trispot darter.

Exclusions

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making 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.

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 consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, constitute our final economic analysis (FEA) of the critical habitat designation and related factors (IEc 2018, entire). Additional information relevant to the probable incremental economic impacts of critical habitat designation for the trispot darter is summarized below.

The final critical habitat designation for the trispot darter totals approximately 175.4 mi (282.3 km) of streams and rivers and 9,929 ac (4,018 ha) of spawning areas, all occupied at the time of listing. This final critical habitat designation is likely to result annually in a maximum of one formal section 7 consultation, three informal section 7 consultations, and two technical assistance efforts at a total incremental cost of less than \$13,000 per year. Because all designated critical habitat is in the range occupied by the trispot darter, any actions that may affect critical habitat will likely also affect the species. Therefore, it is unlikely that any additional conservation efforts will be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. The only additional costs expected due to the critical habitat designation are administrative costs to consider adverse modification, which are incurred by both the Federal action agency and the Service.

Exclusions Based on Economic Impacts

As discussed above, the Service considered the economic impacts of the critical habitat designation, and the Secretary is not exercising his discretion to exclude any areas from this

designation of critical habitat for the trispot darter based on economic impacts. A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Alabama Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at <http://www.regulations.gov>.

Exclusions Based on Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act may not cover all Department of Defense (DoD) lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of "critical habitat." Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns. No lands within the designation of critical habitat for trispot darter are owned or managed by DoD or DHS. Consequently, the Secretary is not exercising his discretion to exclude any areas from this 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 habitat conservation plans, 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 final rule, we have determined that there are currently no permitted conservation plans or other non-permitted conservation agreements or partnerships for the trispot darter, and the final critical habitat designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or permitted or non-permitted plans or agreements from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory

flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate only the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 will be directly regulated by this 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 will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Executive Order 13771

This rule is not an E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with trispot darter conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to 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 rule will 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 will significantly or uniquely affect small governments because most of the lands within and adjacent to the streams being designated as critical habitat are owned by private landowners. These entities do not fit the definition of “small governmental jurisdiction.” The 4.42 mi (7.28 km) of riparian habitat owned by Federal, State, or local governments that we are designating as

critical habitat in this rule are either lands managed for conservation or lands already developed. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, 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 trispot darter 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 the trispot darter does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this 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 the critical habitat designation with, the appropriate State resource agencies. We did not receive comments from the States. 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 does not have substantial direct effects either on the State, or on the relationship between the national government and the State, 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) will 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 are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the species. The designated 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 information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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.

We have identified no tribal interests that will be affected by this rule.

References Cited

A complete list of references cited in this rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0073 and upon request from the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11 in paragraph (h) by revising the entry for “Darter, trispot” under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Fishes				
Darter, trispot	<i>Etheostoma trisella</i>	Wherever found	T	83 FR 67131, 12/28/2018; 50 CFR 17.44(q); ^{4d} 50 CFR 17.95(e). ^{CH}

■ 3. Amend § 17.95 in paragraph (e) by adding an entry for “Trispot Darter (*Etheostoma trisella*)” immediately following the entry for “Slackwater Darter (*Etheostoma boschungii*)”, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(e) *Fishes.*
* * * * *

Trispot Darter (*Etheostoma Trisella*)

(1) Critical habitat units are depicted for St. Clair, Etowah, Cherokee, and Calhoun Counties, Alabama; Bradley and Polk Counties, Tennessee; and Whitfield, Murray, and Gordon Counties, Georgia, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the trispot darter consist of the following components:

(i) Geomorphically stable, small to medium streams with detritus, woody debris, and stands of water willow (*Justicia americana*) over stream substrate that consists of small cobble, pebbles, gravel, and fine layers of silt;

and intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(ii) Adequate seasonal water flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time) necessary to maintain appropriate benthic habitats and to maintain and create connectivity between permanently flowing streams with associated streams that hold water from November through April, providing connectivity between the darter’s spawning and summer areas.

(iii) Water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(iv) Prey base of aquatic macroinvertebrates.

(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 October 30, 2020. In addition, any lands that are perennially dry areas that are located within the critical habitat boundaries shown on the maps in this entry are not designated as critical habitat.

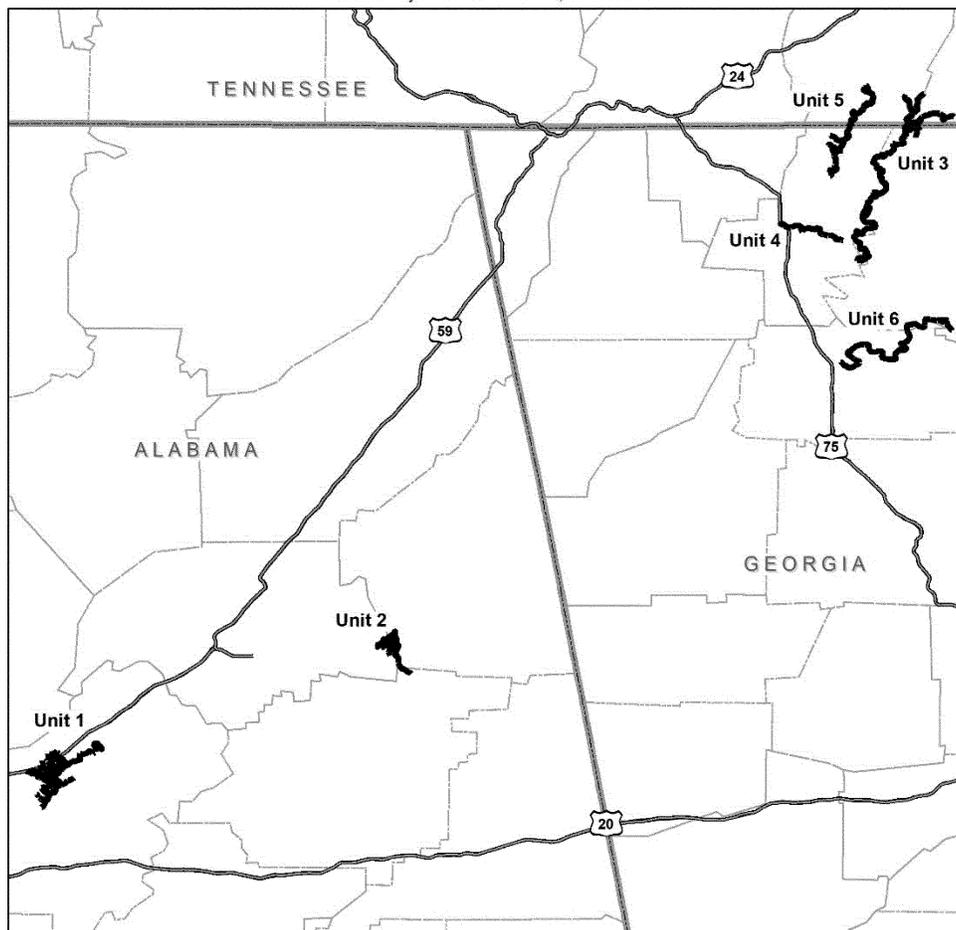
(4) *Critical habitat map units.* Data layers defining map units were created using Universal Transverse Mercator (UTM) Zone 16N coordinates and species’ occurrence data. The hydrologic data used in the maps were extracted from U.S. Geological Survey National Hydrography Dataset High Resolution (1:24,000 scale) using Geographic Coordinate System North American 1983 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> under Docket No. FWS–R4–ES–2018–0073.

(5) *Note:* Index map follows:

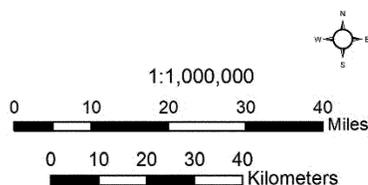
BILLING CODE 4333–15–P

**Trispot Darter (*Etheostoma trisella*)
Critical Habitat Index Map**

Etowah, Cherokee, Calhoun, and St. Clair Counties, Alabama; Gordon, Murray, and Whitfield Counties, Georgia;
and Bradley and Polk Counties, Tennessee



-  Trispot Critical Habitat
-  US Interstates
-  State Boundary
-  US Counties



(6) Unit 1: Big Canoe Creek, St. Clair County, Alabama.

(i) *General Description:* Unit 1 consists of 41 stream miles (mi) (66 kilometers (km)) in St. Clair County, Alabama, from approximately 3.5 mi (5.6 km) upstream of Pinedale Road, west of Ashville, Alabama, to approximately U.S. Highway (Hwy.) 11.

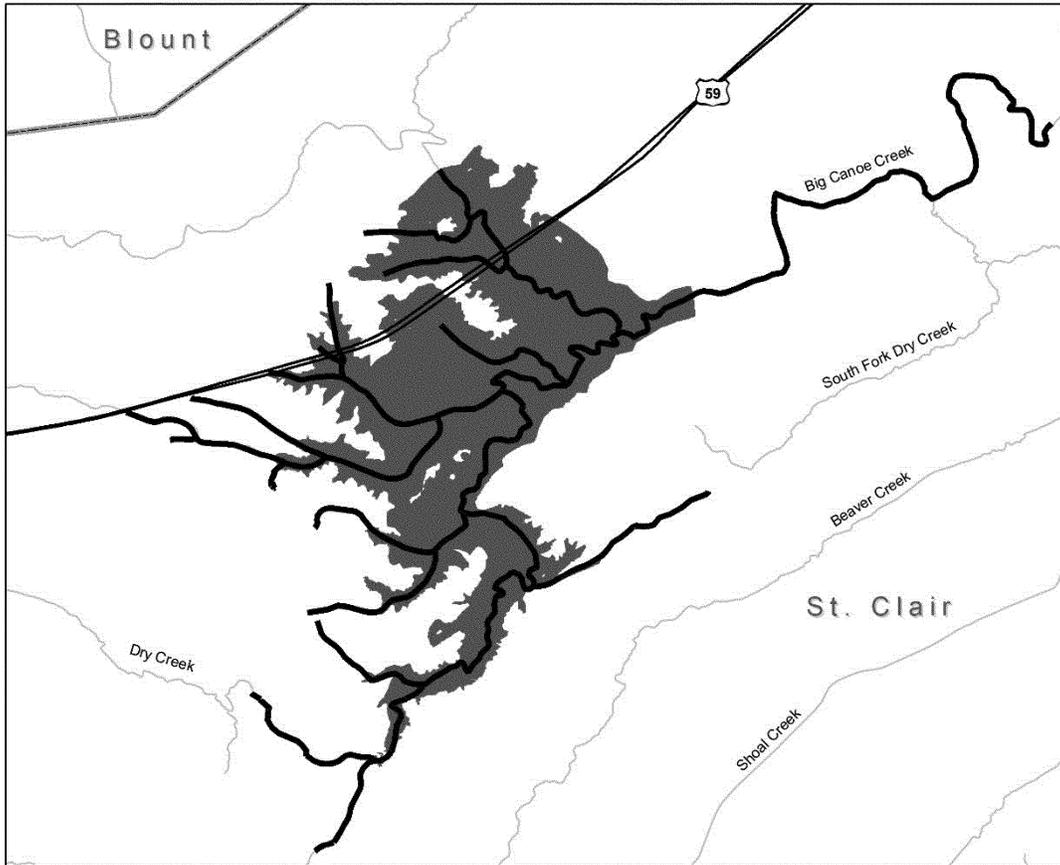
In addition to Big Canoe Creek, Unit 1 includes the westernmost portion of Little Canoe Creek to State Hwy. 174 and all of its associated tributaries. Unit 1 also includes all low-elevation areas (5,286 acres (ac) (2,139 hectares (ha))) containing channels that hold water from November through April beginning 0.5 mi (0.8 km) upstream of County

Road 31 upstream to the U.S. Hwy. 11 crossing with Big Canoe Creek, approximately 0.70 mi (1.1 km) downstream of the Interstate 59 (I-59) crossing with the Left Hand Prong Little Canoe Creek, and the State Hwy. 174 crossing with Little Canoe Creek and Stovall Branch.

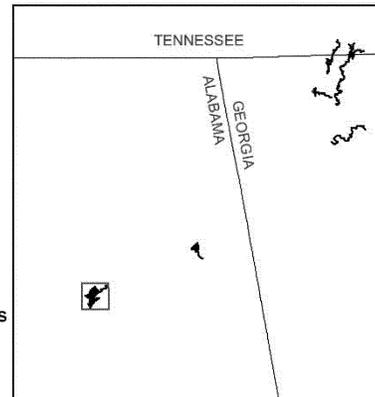
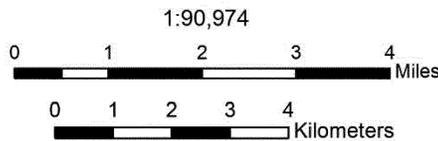
(ii) Map of Unit 1 follows:

**Unit 1 Big Canoe Creek Critical Habitat for
Trispot Darter (*Etheostoma trisella*)**

St. Clair County, Alabama



- Big Canoe Creek Critical Habitat Streams
- Big Canoe Creek Critical Habitat
- Rivers and Streams
- Cities
- County Boundary
- State Boundary



(7) Unit 2: Ballplay Creek, Etowah, Cherokee, and Calhoun Counties, Alabama.

(i) Unit 2 consists of 17 stream mi (27 km) of Ballplay Creek in Etowah, Cherokee, and Calhoun Counties, Alabama, and 2,527 ac (1,023 ha) of ephemeral spawning habitat. Unit 2 begins upstream of a wetland complex

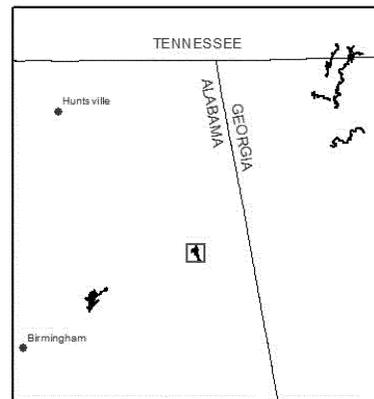
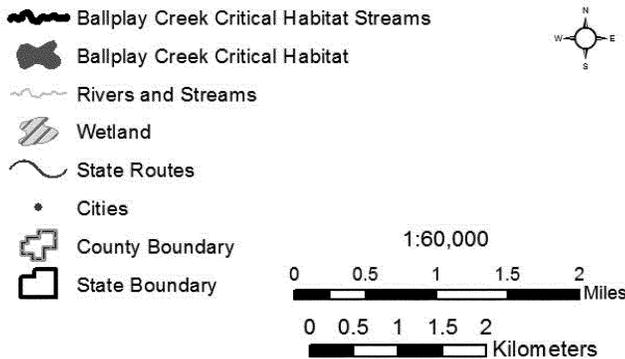
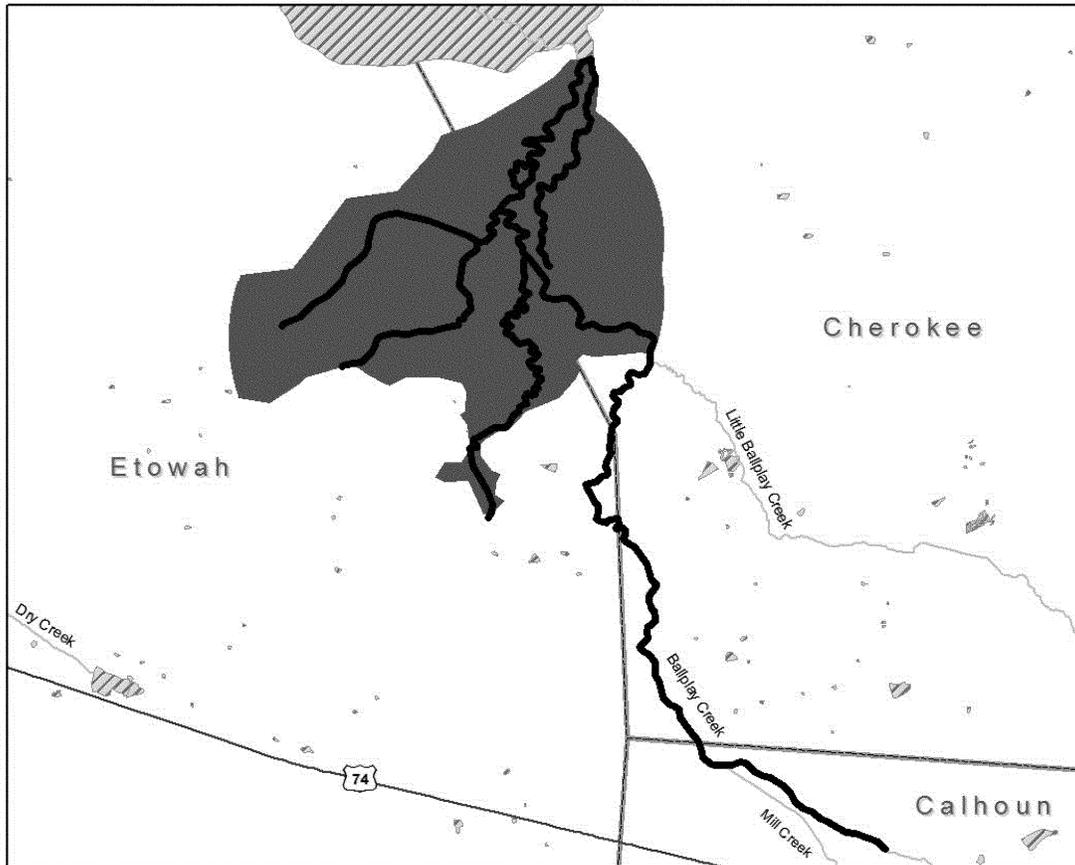
located at the border between Etowah and Cherokee Counties approximately at County Road 32, and continues upstream approximately to the U.S. Hwy. 278 crossing over Ballplay Creek in Calhoun County, Alabama. Unit 2 includes all low-elevation areas containing channels that hold water from November through April beginning

upstream of the wetland complex located at the border between Etowah and Cherokee Counties approximately 0.60 mi (1 km) southwest of County Road 32, extending upstream to the confluence of Ballplay and Little Ballplay Creeks and to the west along Rocky Ford Road and Alford Road.

(ii) Map of Unit 2 follows:

**Unit 2 Ballplay Creek Critical Habitat for
Trispot Darter (*Etheostoma trisella*)**

Etowah, Cherokee, and Calhoun Counties, Alabama



(8) Unit 3: Conasauga River, Bradley and Polk Counties, Tennessee, and Whitfield and Murray Counties, Georgia.

(i) Unit 3 consists of 57 stream mi (92 km) and 1,400 ac (567 ha) of ephemeral wetland spawning habitat in Whitfield and Murray Counties, Georgia, and Polk and Bradley Counties, Tennessee. Unit 3 begins in the Conasauga River upstream of the mouth of Coahulla Creek and continues upstream to the mouth of Minnewauga Creek. Unit 3

also includes Mill Creek, from its confluence with the Conasauga River in Bradley County, Tennessee, upstream to the first impoundment on Mill Creek approximately at Green Shadow Road SE; Old Fort Creek, from Ladd Springs Road SE in Polk County, Tennessee, to its confluence with Mill Creek in Bradley County, Tennessee; and Perry Creek, from its headwaters (approximately 0.35 mi (0.6 km) upstream of Tenna Gregory Road) to its confluence with the Conasauga River in

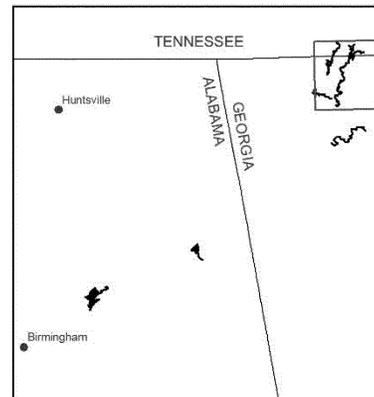
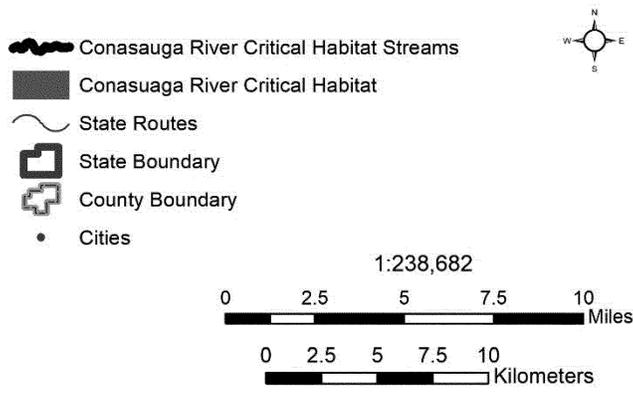
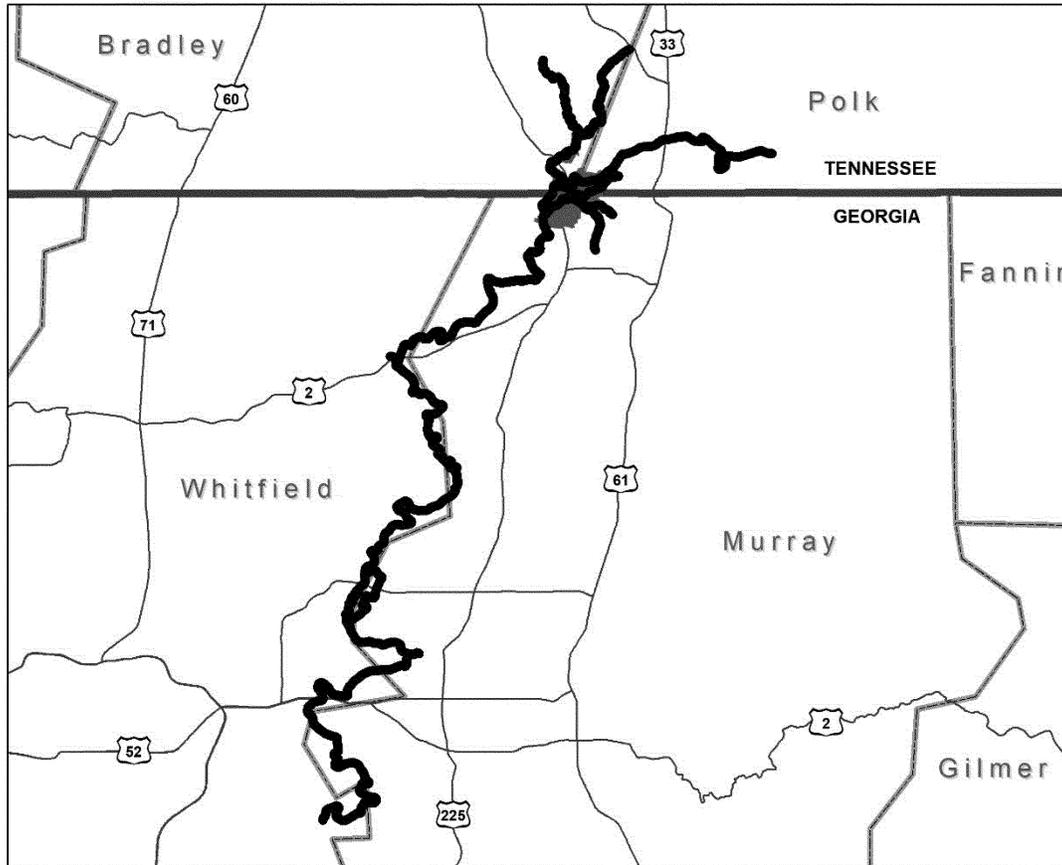
Murray County, Georgia, and both of its tributaries. Unit 3 includes all low-elevation areas containing channels that hold water from November through April, beginning from the confluence of the Conasauga River and Shears Branch (west of U.S. Hwy. 411 in Polk County, Tennessee) to approximately 0.30 mi (0.5 km) downstream of the confluence of the Conasauga River and Perry Creek; Mill Creek from Hicks Tanyard Road downstream to its confluence with the Conasauga River; Old Fort Creek from

Hicks Tanyard Road to its confluence with Mill Creek; and Perry Creek.

(ii) Map of Unit 3 follows:

Unit 3 Conasauga River Critical Habitat for Trispot Darter (*Etheostoma trisella*)

Bradley and Polk Counties, Tennessee & Whitfield and Murray Counties, Georgia



(9) Unit 4: Mill Creek, Whitfield County, Georgia.

(i) Unit 4 consists of 9.4 stream mi (15.1 km) of Mill Creek in Whitfield

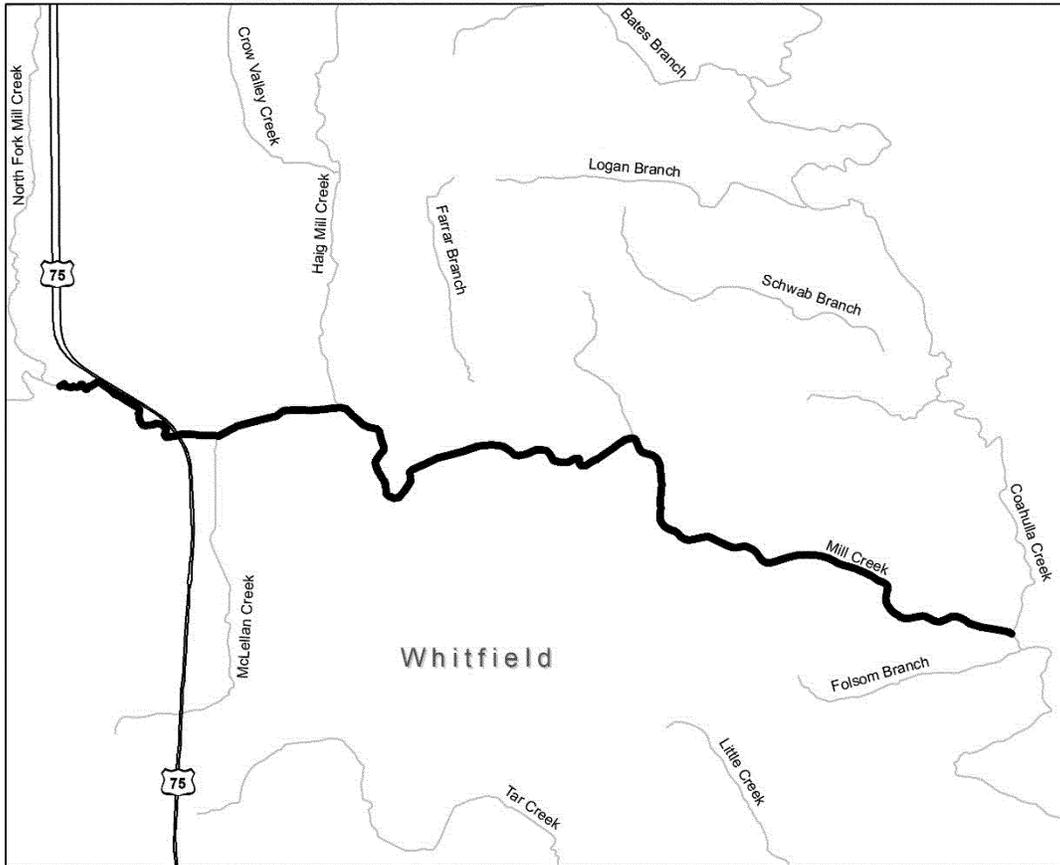
County, Georgia. Unit 4 begins at the confluence of Mill Creek with Coahulla Creek and continues upstream along

Mill Creek for approximately 9.4 mi (15.1 km) to the U.S. Hwy. 41 crossing.

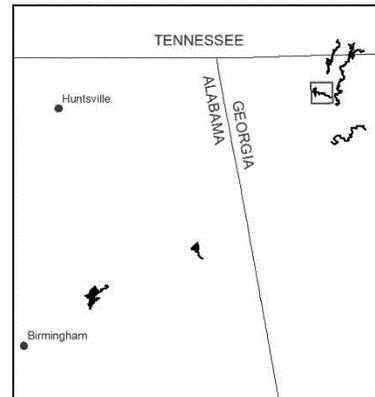
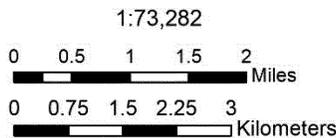
(ii) Map of Unit 4 follows:

Unit 4 Mill Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

Whitfield County, Georgia



- Mill Creek Critical Habitat
- Rivers and Streams
- Cities
- US Interstates
- State Boundary



(10) Unit 5: Coahulla Creek, Whitfield County, Georgia, and Bradley County, Tennessee.

(i) Unit 5 consists of 26 stream mi (42 km) of Coahulla Creek and 716 ac (290 ha) of ephemeral spawning habitat in

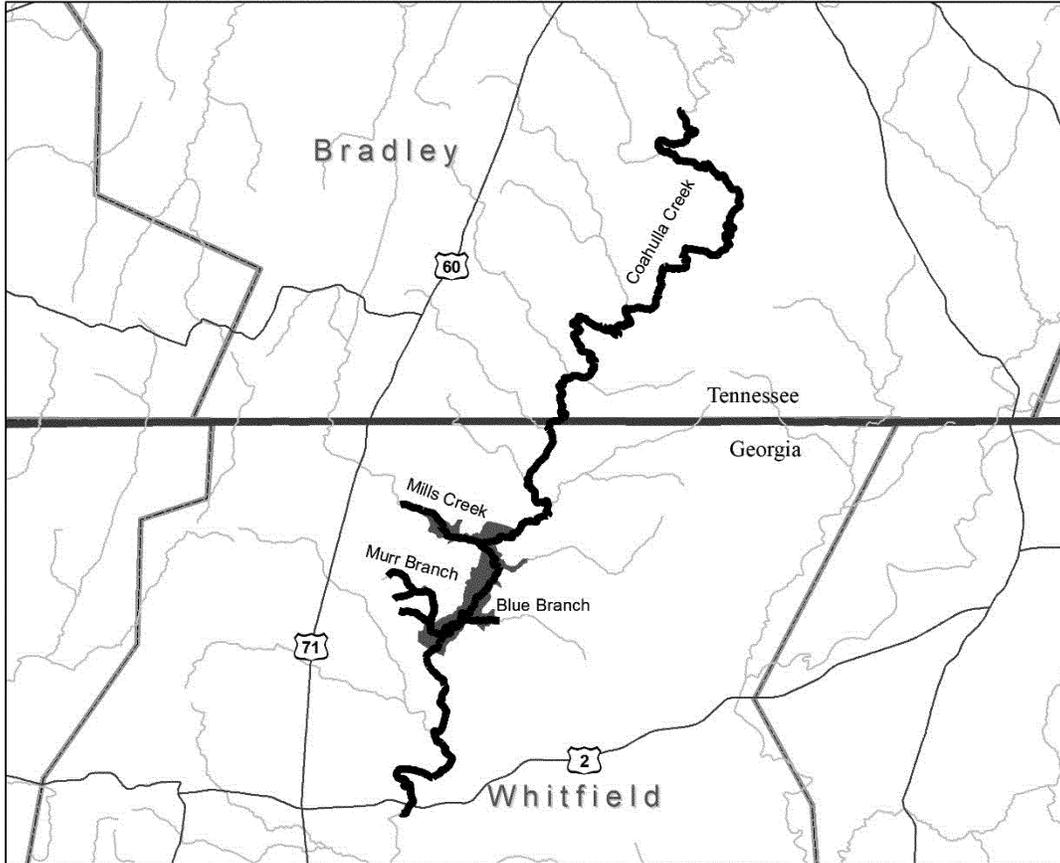
Whitfield County, Georgia, and Bradley County, Tennessee. Unit 5 begins immediately upstream of the Prater Mill dam upstream of State Hwy. 2 in Georgia. The unit continues upstream for approximately 26 mi (42 km) to

Ramsey Bridge Road SE and includes ephemeral wetland habitat from 0.5 mi (0.8 km) downstream of Hopewell Road to approximately 0.5 mi (0.8 km) upstream of McGaughey Chapel Road.

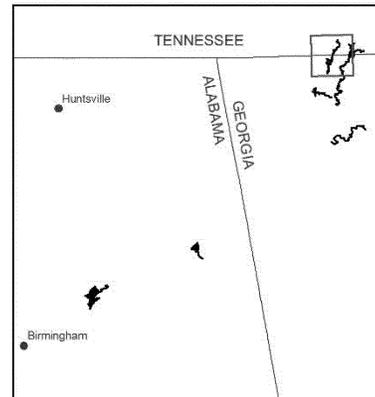
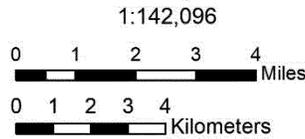
(ii) Map of Unit 5 follows:

**Unit 5 Coahulla Creek Critical Habitat for
Trispot Darter (*Etheostoma trisella*)**

Whitfield County, Georgia; Bradley County, Tennessee



- Coahulla Creek Critical Habitat Streams
- Coahulla Creek Critical Habitat
- Rivers and Streams
- Cities
- State Routes
- State Boundary



(11) Unit 6: Coosawatee River, Gordon and Murray Counties, Georgia.
(i) Unit 6 consists of 25 stream mi (40.2 km) of the Coosawatee River

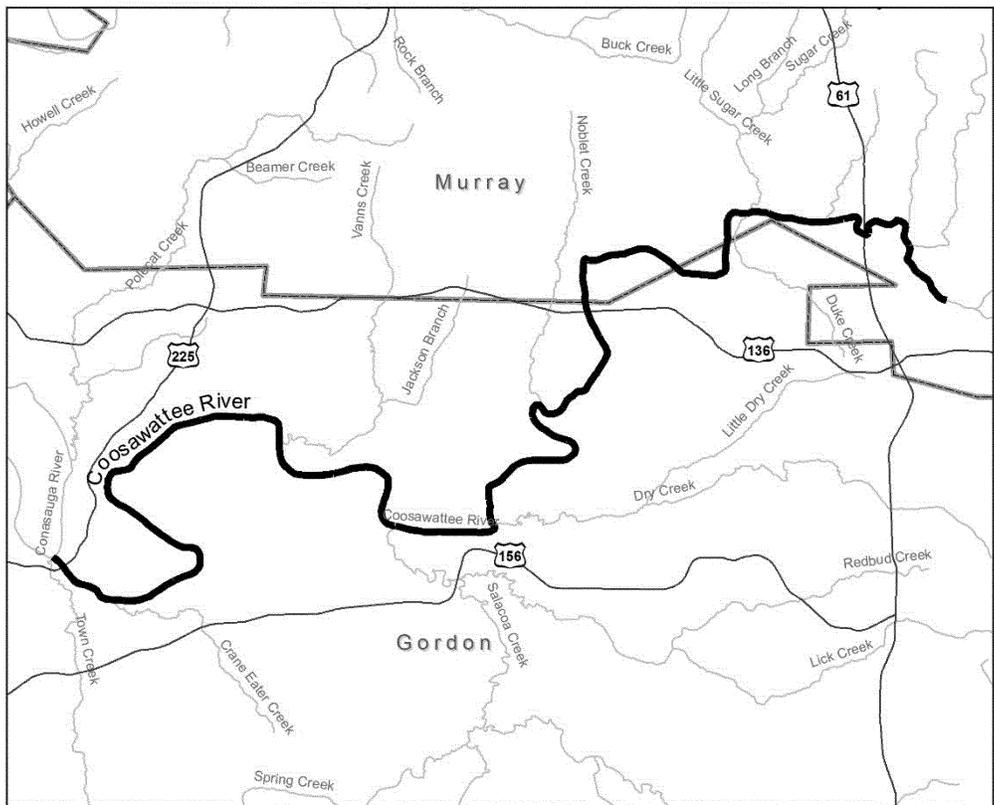
beginning at the confluence with the Conasauga River in Gordon County, Georgia. The unit continues upstream to Old Highway 411 downstream of Carters

Lake Reregulation Dam in Murray County, Georgia.

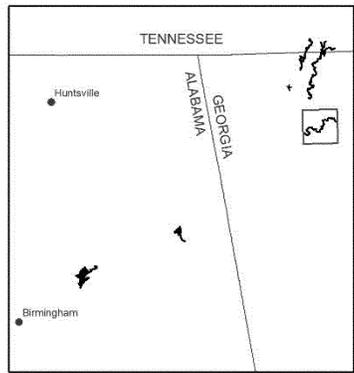
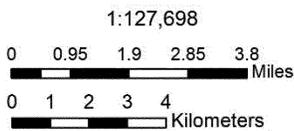
(ii) Map of Unit 6 follows:

**Unit 6 Coosawattee River Critical Habitat for
Trispot Darter (*Etheostoma trisella*)**

Gordon & Murray Counties, Georgia



- Coosawattee River Critical Habitat
- Rivers and Streams
- State Routes
- State Boundary



* * * * *

Aurelia Skipwith,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 2020-19115 Filed 9-29-20; 8:45 am]
BILLING CODE 4333-15-C

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XA505]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; closure of the Atlantic Bluefin Tuna General category September fishery for 2020.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the September subquota time period until the General category reopens on October 1, 2020. The intent of this closure is to prevent overharvest of the adjusted General category BFT September subquota of 195.6 metric tons (mt).

DATES: Effective 11:30 p.m., local time, September 27, 2020, through September 30, 2020.

FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin, 978–281–9260, Nicholas Velseboer 978–675–2168, or Larry Redd, 301–420–8503.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments, and in accordance with implementing regulations.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

Closure of the September 2020 General Category Fishery

The 2020 base quota for the General category is 555.7 mt. (See § 635.27(a)). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a subquota or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. NMFS previously increased the January subquota to 100 mt through two inseason quota transfers (85 FR 17, January 2, 2020, and 85 FR 6828, February 6, 2020) (although it is called the “January” subquota, the regulations

currently allow landings to continue until the subquota is reached, or until March 31, whichever comes first). NMFS recently increased the September subquota to 195.6 mt through an inseason quota transfer (85 FR 59445, September 22, 2020).

Based on the best available landings information for the General category BFT fishery, NMFS has determined that the adjusted September subquota of 195.6 mt is projected to be reached shortly (*i.e.*, as of September 24, reported landings total approximately 169.4 mt) and that the General category should be closed. Therefore, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic tunas General category and HMS Charter/Headboat category (while fishing commercially) must cease at 11:30 p.m. local time on September 27, 2020. The General category will automatically reopen October 1, 2020, for the October through November 2020 subquota time period. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available September subquota.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS’ ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from

the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov, using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery re-opens on October 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, for the following reasons: The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action would be contrary to the public interest as it could result in BFT landings exceeding the adjusted September 2020 General category quota.

For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 25, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–21594 Filed 9–25–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 190

Wednesday, September 30, 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 JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001 and 1003

[EOIR Docket No. 18–0301; A.G. Order No. 4841–2020]

RIN 1125–AA83

Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Department of Justice (“Department” or “DOJ”) regulations to allow practitioners to assist individuals with drafting, writing, or filing applications, petitions, briefs, and other documents in proceedings before the Executive Office for Immigration Review (“EOIR”) by filing an amended version of EOIR’s current forms (Form EOIR–27 and Form EOIR–28) noticing the entry of appearance of a practitioner. Those amended forms would also function as a notice of disclosure of legal assistance for practitioners who provide legal assistance but choose not to represent aliens in immigration proceedings, and also a notice of disclosure of preparation by practitioners. The proposed rule would further clarify that the only persons who may file a document with the agency are those recognized as eligible to do business with the agency and those aliens who are filing a document over which the agency has jurisdiction. Also, the proposed rule would make non-substantive changes regarding capitalization and amend outdated references to the former Immigration and Naturalization Service (“INS”).

DATES: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before October 30,

2020. The electronic Federal Docket Management System at www.regulations.gov will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide any comment regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1125–AA83 or EOIR Docket No. 18–0301, by one of the two methods below.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the website instructions for submitting comments.

- **Mail:** Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AA83 or EOIR Docket No. 18–0301 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041, Telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule via the one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at www.regulations.gov. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONALLY IDENTIFYING INFORMATION” in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personally identifying information located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Departments may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>. To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

II. Background

The Immigration and Nationality Act (“INA”) provides that aliens appearing before an immigration judge “shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.” INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A); *see also* INA 292, 8 U.S.C. 1362 (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings . . . the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as [the person concerned] shall choose.”); 8 CFR 1003.16(b) (“The alien may be represented in proceedings before an Immigration Judge by an attorney or other representative of his or her choice in accordance with 8 CFR part 1292, at no expense to the government.”).

DOJ has promulgated regulations establishing rules of procedure and standards of professional conduct governing “practitioners”—*i.e.*, attorneys, law students, law graduates, reputable individuals, and accredited representatives permitted to practice before EOIR. 8 CFR 1003.101(b) (defining practitioner); *id.* 1003.1–8 (Board of Immigration Appeals); *id.* 1003.12–47 (immigration court rules of procedure); *id.* 1003.101–11 (professional conduct for practitioners). Under those regulations, practitioners who represent an individual in proceedings before EOIR must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (“Form EOIR–27”) or a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (“Form EOIR–28”). 8 CFR 1003.3(a)(3), 1003.17, 1292.4. Practitioners are subject to disciplinary sanctions if they provide representation before the BIA or the immigration courts and fail to submit a signed and completed Form EOIR–27 or Form EOIR–28 or fail to sign every pleading, application, motion, or other filing in their individual names. 8 CFR 1003.102(t).

Generally, when a practitioner enters a notice of appearance, the practitioner is obligated to represent the individual for the remainder of the proceeding unless the immigration judge or the Board of Immigration Appeals (“Board” or “BIA”) grants that practitioner’s motion to withdraw or substitute counsel. 8 CFR 1003.17, 1003.38,

1292.4. In 2015, however, the Department published a final rule allowing practitioners to enter an appearance for the limited purpose of representing an alien in custody and bond proceedings. Separate Representation for Custody and Bond Proceedings, 80 FR 59500 (Oct. 1, 2015). Practitioners appearing before an immigration judge may indicate on Form EOIR–28 that their appearance is for “All proceedings,” for “Custody and bond proceedings only,” or “All proceedings other than custody and bond proceedings.” 8 CFR 1003.17(a); Form EOIR–28.

III. Public Comments

On March 27, 2019, the Department published an Advanced Notice of Proposed Rulemaking (“ANPRM”) with 11 questions to solicit public comments regarding whether the Department should allow practitioners who appear before EOIR to engage in limited representation, or representation of a client during only a portion of the case beyond what the regulations currently permit. Professional Conduct for Practitioners, Scope of Representation and Appearances, 84 FR 11446 (Mar. 27, 2019).

The Department received 30 comments¹ in response to the ANPRM. The vast majority of comments were submitted by organizations (16 comments) and individuals (9 comments) who provide legal services to aliens appearing before EOIR, including the American Immigration Lawyers Association (“AILA”), the American Civil Liberties Union (“ACLU”), non-profit legal service providers, immigration law clinics, private immigration attorneys, and law students. Three comments were submitted anonymously, including one by a law student intending to become an immigration attorney. Comments were also submitted by the National Association of Immigration Judges (“NAIJ”) and the Administrative Conference of the United States (“ACUS”).

The comments are summarized below in relation to the specific questions raised in the ANPRM.

Question 1: Should the Department permit certain types of limited representation currently impermissible under regulations? If so, to what extent? If not, why not?

¹ The Department received a total of 32 public comments, 2 of which were duplicates.

A. Advisability of Limited Representation

The vast majority of the comments—26 of 30—supported allowing practitioners to assist clients in only part of a case. Two of the comments—one by NAIJ and one submitted by a commenter identifying only as a law student—opposed such limited representation. Two comments did not take a clear position.²

Several comments supporting limited representation noted that the American Bar Association (“ABA”) and a majority of state bar associations allow the practice. *See* Model Code of Prof’l Conduct R. 1.2(c) (“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”); ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 472 (2015) (discussing proper attorney communication with a person receiving limited-scope legal services); *but see* “Ghostwriting Controversy: Is there an ethical problem with attorneys drafting for pro se clients?” *ABA Journal* (June 2018) (quoting an attorney regarding the provision of limited representation services without disclosure of such assistance to the court: “The lack of a clear and consistent position by courts and bar associations is one of the substantial challenges facing the profession on this issue. For example, bar associations have typically taken a more favorable view of ghostwriting than have the courts themselves. Even among courts there are differing viewpoints, with federal courts generally viewing ghostwriting less favorably than state courts. Likewise, different states have adopted different views on this issue.”). However, NAIJ, writing in strong opposition to limited representation, stated that while bar associations may theoretically allow limited representation, “NAIJ is not aware of any other state or federal courts allowing for such limited representation,” indicating that it is not workable in practice.

Most of the comments supported limited representation as a means to increase access to counsel.³ Several commenters pointed to limited representation in the bond and custody context as an illustration of how limited

² One comment expressed concern that the Department would eliminate limited representation for bond and custody proceedings. The other comment suggested that EOIR needed to conduct an extensive study to determine the effects of limited representation on judicial outcomes.

³ Some comments opined that government-funded counsel should be provided. Such suggestions are beyond the scope of this regulation.

representation can lead to better outcomes for respondents and greater immigration court efficiency. Some commenters pointed to the Department's past statements when allowing limited representation in custody and bond proceedings. See *Separate Representation for Custody and Bond Proceedings*, 80 FR 59500 (Oct. 1, 2015) (final rule); 79 FR 55660 (Sept. 17, 2014) (proposed rule) (noting that regulations that are expected to encourage more practitioners to agree to represent individuals who would otherwise navigate EOIR's proceedings on their own would, in turn, benefit the public by increasing the efficiency of the immigration courts). NAIJ cautioned, however, that although limited representation in bond proceedings is appropriate, "respondents are often unaware that they are only hiring attorneys for a limited portion of their case," and predicted that "[a]llowing attorneys to further limit their representation of respondents in removal proceedings will only lead to additional confusion on the part of the respondents."

Many commenters asserted that many practitioners are forced to decline to assist respondents because they are unable to commit to full representation for the entirety of the case as required under the current regulations. They noted that some cases involve multiple hearings over a number of years while others might be scheduled too quickly for practitioners to sufficiently prepare. These commenters suggested that practitioners would be more likely to assist individuals if they were not automatically committed to representation for the entirety of the proceedings.

Many of the commenters argued that individuals who are represented in proceedings before EOIR achieve better outcomes, with several providing statistics to support their claims. The comments supporting some form of limited representation either stated or implied that individuals who receive assistance in only a portion of their cases will fare better than those who receive no representation. Several comments stated that limited representation may improve the quality of representation and reduce the likelihood that respondents turn to *notarios*⁴ or other bad actors. One

commenter stated that limited representation would empower dissatisfied respondents to find new counsel and incentivize practitioners to provide quality representation if they wished to be retained for further work in a case. Additionally, commenters noted that practitioners could tailor their practice to matters in which they are the most qualified.

NAIJ disagreed that individuals would be better off with limited representation, arguing that it would result in "an undue and misplaced burden [being] placed on respondents who may not have representation at merit hearings, to account for lacking documentation and missed attorney deadlines set at the master hearings [where a limited representative was present]."

Several comments predicted that limited representation would increase immigration court efficiency because if more respondents are represented, even in a limited manner, immigration judges would not have to devote as much time, care, and attention during proceedings to make sure that respondents understand the proceedings. Some commenters also argued that with limited representation, relief applications may be presented more clearly and comprehensively, which would make it easier for immigration judges to decide the applications. One comment suggested that limited representation may improve appearance rates of non-detained respondents because respondents may feel more confident appearing if they have assistance of counsel.

NAIJ disagreed, predicting that immigration judges would have "to start hearings anew when a new attorney appears at the individual hearing contesting issues having been concluded at the master or previous hearing," and judges would have to devote additional time to consider revised applications and motions for continuances.

B. Scope of Limited Representation

Commenters in support of limited representation offered a variety of options for expanding limited representation. They suggested both limited representation without restrictions and limited representation restricted to certain respondents,

practitioners, types of proceedings, or discrete parts of proceedings. One or more commenters recommended the following specific options for enacting limited representation:

- Limited representation, including appearances and filings, in all instances (*e.g.*, permitting limited appearances for each scheduled hearing in a given case);
- limited representation, including appearances and filings, except for particularly vulnerable clients (*e.g.*, juveniles and respondents with mental health issues would not be permitted to be represented in a limited capacity);
- limited appearances for vulnerable clients only in the scope of motions to change venue, motions to reopen, and motions to terminate;
- limited representation, including appearances and filings, for each form of relief (*e.g.*, allowing a practitioner to represent a client only for the client's application for cancellation of removal and another practitioner to represent the same client only for the client's application for asylum);
- limited appearances in the form of filing motions and applications for relief only; limited appearances for preparing and filing each "discrete" piece of a respondent's case (*e.g.*, dispositive motions or pleadings);
- limited representation for preparing and filing certain motions only (such as motions to change venue, motions to continue, motions to consolidate or sever, motions to re-calendar, and motions for stay);
- limited representation in-person for a master calendar hearing only, highlighting the possibility that unrepresented respondents might concede charges without understanding the implications of such concessions;
- limited representation in-person for credible and reasonable fear review hearings;
- limited representation permitted by pro bono practitioners, nonprofit practitioners, or EOIR-accredited representatives only;
- limited representation in-person as a pro bono representative for one day only; and
- limited representation in-person by all practitioners without distinction between profit and non-profit representation.

Question 2: Should limited representation be permitted to allow attorneys or representatives to appear at a single hearing in proceedings before EOIR, possibly leaving the respondent without representation for a subsequent hearing on the same filing? If so, to what extent? If not, why not?

Eighteen commenters expressed support for limited representation to

⁴ "In many Latin American countries, the term 'notario publico' (for 'notary public') [or its short form, 'notarios'] stands for something very different than what it means in the United States. In many Spanish-speaking nations, 'notarios' are powerful attorneys with special legal credentials. In the [United States], however, notary publics are people appointed by state governments to witness

the signing of important documents and administer oaths. 'Notarios publico,' are not authorized to provide [persons before EOIR and DHS] with any legal services related to immigration." United States Citizenship and Immigration Services, *Common Scams*, <http://www.uscis.gov/avoid-scams/common-scams> (last updated Nov. 21, 2014) (emphasis added).

permit a practitioner to appear at a single hearing or discrete segments of a case, such as pleadings, arguments on a motion drafted by the practitioner, or an individual hearing on the merits of an application for relief. These comments echoed the reasons given above in support of limited representation generally. They asserted that respondents and immigration courts would benefit from limited representation for a single hearing or segment of the case, even if a respondent had no representation at subsequent hearings. One supporter cautioned that appearances for a single hearing may not be appropriate in circumstances where an individual hearing is scheduled shortly after a master calendar hearing, leaving little time for a subsequent practitioner to prepare, or where a matter requires multiple hearings.

Three commenters opposed limited representation for a single hearing. These commenters expressed concern that immigration proceedings involve multiple hearings over a number of years, and respondents could compromise their case if they later had to proceed pro se and were unable to maintain representation throughout their proceedings. Commenters argued that pro se respondents, in the time between limited representation and an individual hearing, could become confused about their responsibilities regarding filing deadlines, be unable to sufficiently prepare their cases, or could be unaware of changes in the law or new forms of relief that become available.

Question 3: Should limited representation be permitted to allow attorneys or representatives to prepare or file a pleading, application, motion, brief, or other document without providing further representation in the case? If not, why not? If so, should attorneys or representatives be required to identify themselves as the author of the document or should anonymity (*i.e.*, ghostwriting) be permitted?

Nineteen comments advocated allowing practitioners to prepare or file a pleading, application, motion, brief, or other document without having to enter an appearance and without being obligated to assist the client in any other portion of the case. Only one comment advocated that EOIR allow uncredited "ghostwriting," where "attorneys should indicate that an attorney provided assistance but should not be required to identify themselves." The other commenters argued that the practitioner should provide identifying information. For example, AILA suggested, "[t]he lawyer should identify

themselves by providing the same information on the document as if the lawyer were to enter an appearance, but there should be no formal requirement to enter an appearance that would create a future obligation to appear in court or perform other work."

Commenters opposing anonymity argued that anonymity "would not allow for accountability if any individuals are committing any types of fraud or unethical techniques." Other comments raised concerns that ghostwriting could preclude a respondent's ability to reopen proceedings based on ineffective assistance of counsel pursuant to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *See id.* at 639 (stating that "[w]here essential information is lacking, it is impossible to evaluate the substance of" an ineffective assistance claim).

Three commenters opposed a broad rule allowing practitioners to assist on documents with no obligation to continue representing the individual. One commenter raised concerns that often, hearings are set "for years later" after all documents have been submitted, and during that time "the law could change or new relief could become available." The commenter worried that the respondent could thus "be left unprotected and ignorant of the law." The commenter acknowledged, however, that certain acts would not raise such concerns, such as assisting in motions to change venue, motions to continue, or motions for status docket.

Question 4: If limited representation is permitted in proceedings before EOIR, should an attorney or representative be required to file a Notice of Entry of Appearance regardless of the scope of the limited representation? If so, should a form separate from the EOIR-27 and EOIR-28 be created for such appearances?

Fourteen comments addressed this issue, with the majority supporting amendment of the current Form EOIR-27 and Form EOIR-28 to include an option for limited representation or the creation of a separate form. Some suggested that the form include the respondent's signature consenting to the limited representation or a space to define the scope of the limited representation. In the context of assistance in preparing documents, six commenters suggested the inclusion of identifying information about the practitioner with a filed document or completion of the preparer block on an application in order to preclude the submission of an appearance form. Only one of the commenters opposed filing a form, although the commenter suggested that the practitioner should make a

statement on the record about the limited appearance and include a document in the record regarding the respondent's consent to limited representation.

Question 5: If limited representation is permitted, should attorneys or representatives certify to EOIR, either through a form or filings made, that the alien has been informed about the limited scope of the representation?

Of the 14 submissions that addressed the issue, the vast majority (11 submissions) opined that either practitioners should certify they have informed the individual about the limited scope of representation (9 submissions), or the judge should explain the limited scope of representation on the record (2 submissions). The commenters argued that this precaution was necessary to "create accountability for attorneys and representatives" and prevent clients from being "misled to think that the attorney or representative would be representing them from beginning to end."

Commenters offered different suggestions as to the form of such certification. One commenter suggested a simple checkbox on EOIR's Notice of Entry of Appearance form would be sufficient. Others called for more detailed certifications. For example, the DeNovo Center for Healing and Justice argued that the practitioner should "be required to explain the limitations orally and in writing to the client in both English and the client's native language and obtain the client's informed consent to the limitation in a writing signed by both the client and the attorney."

Two comments argued that certification is not necessary, because attorneys are already ethically obligated to inform clients as to the nature and scope of representation. Another comment opined that requiring certification to EOIR "could intrude upon privileged attorney-client communications," especially where the client is a child. This commenter stated that state bar associations are better equipped to enforce safeguards with respect to limited representation than a notification requirement.

Question 6: If limited representation is permitted in proceedings before EOIR, to what extent should such attorneys or representatives have access to the relevant record of proceedings?

Sixteen comments argued that practitioners who engage in limited representation should have access to the relevant record of proceedings in order to competently assess cases, advise respondents, and take the appropriate

actions. Commenters stated that practitioners making limited appearances should have the same access to the record of proceedings as those engaging in full representation; that access for practitioners, whether engaging in limited or full representation, should be codified in this regulation; and that access should be easier and faster.

Six of the comments stated that the Department should make access to the record of proceedings for practitioners engaging in limited representation available upon entry of an appearance or with written consent or authorization of the client.

One commenter stated that limited representation practitioners should not continue to have access to the record once the scope of the limited representation has completed, whereas another comment suggested that practitioners should have access to track the outcomes of matters, such as a motion, in which they provided limited representation.

Question 7: To what extent could different approaches for limited representation impair the adjudicative process or encourage abuse or other misconduct that adversely affects EOIR, the public, or aliens in proceedings, or lead to increased litigation regarding issues of ineffective assistance of counsel?

Question 8: What safeguards, if any, should be implemented to ensure the integrity of the process associated with limited representation in proceedings before EOIR, and to prevent any potential abuse and fraud?

Four comments predicted that allowing some form of limited representation would generally not negatively affect EOIR, the public, or respondents in proceedings. Most of the comments, however, recognized that limited representation could create some potential problems and recommended safeguards to address them.

For example, several comments raised concerns that aliens may not understand the limited scope of representation, either due to confusion on the alien's part or unethical behavior on the part of attorneys. Eleven commenters suggested that either practitioners should certify they have informed the individual about the limited scope of representation (9 submissions), or the judge should explain the limited scope of representation on the record (2 submissions). Two comments argued that EOIR should not place additional burdens on practitioners, as rules of professional conduct already require attorneys to inform their clients about

the limited nature of representation. Another comment argued that action by EOIR could intrude upon privileged attorney-client communications. One commenter additionally suggested that EOIR also establish a hotline or complaint system so that respondents and petitioners could report fraud and abuse by practitioners.⁵

Six submissions raised concerns that attorneys "might overcharge greatly for simple matters" or "may not adjust their fees downward when they engage in limited representation which could drain the available resources of a respondent's family." Commenters offered a range of suggestions for addressing the issue. One comment suggested EOIR should regulate the fees that practitioners may charge for limited representation. Another comment recommended that EOIR publish a range of suggested fees. Nine comments opposed any interference by EOIR in fee arrangements. Several of these commenters argued that rules of professional responsibility already prohibit attorneys from charging exorbitant fees. Two comments urged the Department to restrict limited representation to pro-bono attorneys or to organizations and accredited representatives approved by EOIR's Office of Legal Access Programs in order to avoid price-gouging or other unscrupulous behavior.

Additionally, several commenters worried that notices and decisions might be mailed to the attorney of record only, and once the attorney's role ends, the respondent would not receive these documents. These commenters were concerned that this in turn could lead to an increase in absentia removal orders due to lack of notice to respondents, and they suggested that notices be mailed to both the representative and the client.

As discussed under Question 1, commenters disagreed strongly as to whether limited representation would impair or improve the efficiency of immigration courts and the Board. The comments opposing did not suggest any modifications, only that the Department should not expand limited representation.

Question 9: What kinds of constraints or legal concerns with respect to limited representation may arise under state

rules of ethics or professional conduct for attorneys who are members of the bar in the various states?

Of the twelve comments received addressing this question, many commenters did not foresee any constraints or legal concerns arising under state rules of ethics or professional conduct with respect to limited representation. However, some commenters expressed concerns that states might determine that their rules prohibit limited representation and may possibly implement sanctions for licensed attorneys in their states if they engage in limited representation in immigration court.

One comment opined that a limited appearance rule might be difficult to implement while maintaining the standard of attorney ethical obligations given varied rules in different states. For example, ethical practitioners might not engage in limited representation because of uncertainty over whether the practitioner's state of licensure would consider such conduct ethical. Limited representation might impede a practitioner's obligation to exercise due diligence in representation and zealous advocacy, and, moreover, a succession of practitioners involved in a given respondent's case might also make it difficult to comply with client confidentiality.

Question 10: Should EOIR provide that practitioners, as a condition of representing aliens in a limited manner, be required to agree to limit their fees in charging for their services?

Nine of the 11 comments that addressed this question opposed EOIR interfering with fee arrangements or setting any limit on fees as a condition of permitting practitioners to represent respondents and petitioners on a limited basis. Five comments acknowledged that respondents and petitioners in immigration proceedings are particularly vulnerable to overcharging, but noted that state bar rules and EOIR's own regulations already regulate against unreasonable fees. See 8 CFR 1003.102(a) (prohibiting "grossly excessive" fees). These comments generally stressed that the Department should give practitioners and clients the latitude to determine appropriate fees, depending on the scope of the limited representation, within the confines of these rules.

Two comments stated that EOIR should require practitioners to limit their fees for limited representation. One of these comments expressed concern that practitioners would charge respondents and petitioners fees for full representation when the scope of the work was limited. The other comment

⁵ The Department notes that practitioners, aliens, and others may currently submit complaints about fraudulent activity to EOIR's Fraud Program via email at EOIR.Fraud.Program@usdoj.gov or by phone at 877-388-3840. See EOIR, *Fact Sheet: EOIR's Fraud and Abuse Prevention Program* (June 2017), available at <https://www.justice.gov/eoir/page/file/eoirfraudprogramfactsheetjune2017/download>.

suggested that EOIR offer a suggested range of fees for limited representation services, rather than a set amount, to account for the varying amount of work that the practitioner would need to perform in individual cases.

Question 11: The Department is interested in gathering other information or data relating to the issue of expanding limited appearances in EOIR proceedings. Are there any additional issues or information not addressed by the Department's questions that are important for the Department to consider? Please provide as much detail as possible in your response.

The majority of commenters supported their positions with citations to outside sources in the scope of their responses to questions 1 through 10 and, in some instances, in response to this question in particular. The Department appreciates the additional information and has taken it into consideration.

IV. Discussion of Proposed Changes

After reviewing the public comments received in response to the ANPRM, the Department is issuing this proposed rule, which would amend §§ 1001.1, 1003.17, and 1003.102 of chapter V of title 8 of the Code of Federal Regulations. The proposed rule would not expand in-court limited representation beyond the existing provisions for custody and bond proceedings.⁶ Instead, the Department

⁶In reaching this decision, DOJ agrees with many of the concerns raised that limited representation would likely lead to confusion on the part of individuals in proceedings before EOIR, multiply the opportunities for fraud and abuse, and potentially complicate and lengthen immigration proceedings with comparatively little offsetting benefit to individuals and without any benefit to the government. Almost 75 percent of cases pending at least six months have representation, nearly 90 percent of cases in which the respondent is seeking asylum have representation, and over 80 percent of appeals to the BIA have representation. Thus, allowing limited representation would have only a marginal impact, if any, on the overall representation rates in immigration proceedings, and that marginal impact would not offset either the significant increased operational burdens or the increased likelihood of fraud, abuse, and confusion. Additionally, DOJ notes that allowing limited representation would likely place a substantial administrative burden on EOIR. Finally, DOJ is concerned that allowing for limited representation could have unintended negative consequences for individuals appearing before EOIR. DOJ believes that an alien is best served by an attorney or representative who commits to represent the individual through the entire case. But a rule allowing an attorney or representative to appear piecemeal at hearings in a case could create perverse incentives. An attorney or representative may see no reason to commit himself to representing a client through an entire case if he or she could, through limited appearances, preserve the ability to exit the case at any time. These concerns are lessened, however, in the context of

proposes to allow practitioners to assist pro se individuals with drafting, writing, or filing applications, motions, forms, petitions, briefs, and other documents with EOIR, as long as the nature of the assistance is disclosed on an amended Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals or a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Forms EOIR-27 and EOIR-28, collectively, "NOEA forms"). Further, the proposed rule would not allow such continued practice or preparation without additional disclosure following the same procedure.⁷ Under this scenario, EOIR would not recognize the practitioner as a representative of record for the individual or case, but would maintain, in the record of proceeding, the practitioner's information as associated with the relevant filing. Moreover, while individuals would be permitted to obtain such assistance, the proposed rule would not create any right or entitlement for aliens to obtain such assistance, nor would it permit EOIR funds to be used for such assistance. Practitioners who assist a pro se alien without representing that alien before EOIR would be required to file the amended NOEA form disclosing the nature of that assistance, either practice or preparation, and related information.

Consistent with this change, the Department proposes to amend the definitions of "practice" and "preparation" to distinguish between acts that involve the provision of legal

drafting, writing, or filing applications, motions, forms, petitions, briefs, and other documents. Written filings provide more discrete assistance and are more easily ascribed to a specific practitioner at a specific moment rather than having to parse arguments made by multiple practitioners at multiple hearings. Further, there is less likelihood of confusion by a respondent inherent in written documents because there is a written record to which a respondent can refer, rather than trying to rely on recalling what happened at a prior hearing. Finally, there is less likelihood of written filings complicating or lengthening hearings because the extent of the assistance is clearer in a written document and provides more concrete evidence of a practitioner's expectations, which are, in turn, made clearer to the immigration judge and the respondent. In short, the inherently limited nature of written assistance and the greater transparency involved in preparing written documents lessen the above concerns sufficiently that the Department feels limited written assistance, if properly disclosed as provided in the proposed rule, is appropriate in immigration proceedings.

⁷For example, a practitioner could draft a motion for a continuance for an alien and attach an NOEA form for the filing of that limited purpose. While that ends the practitioner's immediate obligation under this proposed rule, there is no prohibition against the practitioner later assisting the alien with the completion of an application for relief as long as the practitioner again follows the outlined procedure for notice of appearance.

advice or exercise of legal judgment (practice) and acts that consist of purely non-legal assistance (preparation). Specifically, under the proposed rule, an individual would engage in practice when he or she provides legal advice or uses legal judgment and either appears in person before EOIR, or drafts or files documents with EOIR. Preparation, by contrast, would be limited to completing forms or applications without the provision of legal advice or the exercise of legal judgment—for example, by serving purely as a transcriber or translator.⁸

Under the proposed rule, where the individual is pro se and the practitioner's role consists solely of non-representative practice or preparation, the practitioner would be required to submit an amended NOEA form listing his or her name, contact information, bar number ("BAR#") or EOIR identification number ("EOIR ID#"), as applicable,⁹ work done, and fees charged, as well as to complete an attestation and certification on the NOEA form attesting that the practitioner has explained, and the individual understands, the limited nature of the assistance.

Additionally, the proposed rule would make conforming changes to DOJ's regulations concerning limited representation in bond proceedings. The proposed rule would clarify that advocating in open court on behalf of a respondent for purposes of custody or bond proceedings constitutes practice and requires the filing of a notice of appearance. This clarification eliminates any confusion regarding practitioners who may appear in court and advocate on behalf of a respondent without clearly identifying themselves as the legal representative of the respondent. Finally, the proposed rule would make minor, non-substantive changes regarding capitalization of the

⁸The Department notes that it expects practitioners to engage only rarely in acts of preparation, because of the inherent likelihood that a practitioner will exercise legal judgment or provide legal advice while performing otherwise ministerial tasks such as serving as a scribe in filling out a form.

⁹A practitioner who is an attorney who has not represented an alien in proceedings before EOIR in the past and who, as a result, does not have an EOIR ID# would provide his or her BAR#. However, a practitioner who is an attorney who has previously registered with EOIR and been assigned an EOIR ID# would be required to provide that EOIR ID# on the updated NOEA form. A practitioner who is a registered, fully accredited representative, see 8 CFR 1292.1(a)(4), would also be required to provide the representative's EOIR ID# on the updated form. An attorney would not be required to register with EOIR and obtain an EOIR ID# in order to be able to submit the updated NOEA form and engage in non-representative practice or preparation.

term “immigration judge” and outdated references to the former INS.

A. “Practice” Versus “Preparation”

The Department proposes to amend its regulations to more clearly differentiate between legal activities undertaken by attorneys and legal representatives, and non-legal activities that may be undertaken by lay persons.

DOJ’s current regulations provide overlapping definitions for “practice” and “preparation.” 8 CFR 1001.1(i), (k). The regulations state that practice includes preparation, and preparation constitutes practice. *Id.* Both acts involve the provision of legal advice, with preparation being a subset of practice. *See* 8 CFR 1001.1(k) (defining “preparation” as “study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities”); *id.* 1001.1(i) (defining “practice” as appearing before EOIR either in person or through the “preparation” or filing of papers). Moreover, the standards of professional conduct do not vary based on whether a representative engages in preparation or practice.

The Department believes it would be more useful to distinguish between acts that involve the provision of legal advice or exercise of legal judgment (practice) and acts that consist of purely non-legal assistance (preparation). Specifically, under the proposed rule, an individual would engage in practice when he or she provides legal advice or uses legal judgment and either appears in person before EOIR or writes or files documents with EOIR. “Practice” would thus encompass the actions typically regarded as the practice of law related to any matter or potential matter, before or with EOIR, and including both in-court and out-of-court representation. Such actions include legal research, the exercise of legal judgment regarding specific facts of a case, the provision of legal advice as to the appropriate action to take, drafting a document to effectuate the advice, or appearing on behalf of a respondent or petitioner, in person or through a filing.

“Preparation,” by contrast, would be limited to the completion of forms with information provided by the respondent or petitioner without any legal judgment, analysis, advice, or consideration as to the propriety of the form for a respondent or petitioner’s circumstances. For example, individuals who appear before EOIR may have help completing applications or forms with such basic, factual information as their name, address, place of birth, etc. These activities do not involve the provision of legal advice or application of legal

knowledge or judgment and thus constitute preparation. This proposed rule would not relieve any such preparer from the requirements that the preparer complete the preparer identification or disclosure on the forms containing such request for information. Further, it is important to note that those assisting an individual in completing forms as preparation must take care to avoid providing legal advice or exercising legal judgment regarding a specific case, as such actions would constitute practice and would trigger the additional requirements to which practice is subject as compared to preparation. For example, an individual who advises a client on what details to include in an asylum application in order to establish past persecution, or learns information about an alien’s case and suggests taking a particular action, would be engaging in practice. The Department also notes that those not actively licensed in law or fully accredited through EOIR’s recognition and accreditation process should not be providing legal judgment or advice, as such actions could constitute the unauthorized practice of law.

Finally, the current definition of “representation” merely cross-references the definitions of “preparation” and “practice.” 8 CFR 1001.1(m). In light of the changes to those definitions, the proposed rule also makes concomitant changes to the definition of “representation” to ensure consistency among the definitions. It also makes clear, consistent with the revised definition of “practice,” that an individual may not take legal action on behalf of an alien in open court in immigration court proceedings without representing that alien throughout the entire action.

B. Assistance to Pro Se Individuals

The proposed rule would not expand limited representation beyond the existing provisions for custody and bond proceedings. Instead, the Department proposes to allow practitioners to assist pro se individuals with drafting, writing, or filing applications, motions, forms, petitions, briefs, and other documents with EOIR, provided that such assistance is clearly disclosed on an amended NOEA form. The proposed rule would not allow practitioners to advocate in open court on behalf of a respondent, however, without being recognized as the respondent’s legal representative in immigration proceedings and without filing an NOEA form noticing the practitioner’s entry of appearance.

In conjunction with the proposed rule, EOIR will amend each of its two

NOEA forms to include a section limited to situations in which a practitioner has provided assistance in the form of non-representative practice, but does not wish to take on actual representation in the EOIR proceeding, and a section limited to the rare situation in which a practitioner has engaged in preparation.

In all cases in which a practitioner intends to represent an individual in immigration proceedings, including all cases in which a practitioner advocates on behalf of an individual in open court, the practitioner would complete the section of the amended NOEA form relating to representation similar to the current practice with the existing EOIR Forms 27 and 28.

In cases where a practitioner engages in non-representative practice, the practitioner would complete one of the new portions of the NOEA form disclosing the legal assistance and additional information discussed below. The practitioner would also attest that the alien understands the limited nature of the assistance being provided, and the alien would certify that he or she understands the limited nature of the practitioner’s role. The NOEA form would then be filed with EOIR concomitantly with whatever filing was the subject of the legal assistance.

In all cases in which an individual, either a practitioner or non-practitioner, assists an alien with filling out an application form that requires disclosure of the assistance—*e.g.*, an Application for Asylum and for Withholding of Removal (Form I–589); Application to Register Permanent Residence or Adjust Status (Form I–485); Application for Suspension of Deportation (Form EOIR–40); Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR–42A); Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR–42B); or, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881)—the person assisting would still be required to disclose the assistance on the form where indicated.

In the unlikely or rare situation in which a practitioner engages in preparation that is not based on a form that already requires disclosure of the assistance, the practitioner would complete one of the new portions of the NOEA form disclosing the preparation and the additional information discussed below. The practitioner would also attest that the alien understands the preparatory nature of the assistance provided, and the alien

would certify his or her understanding. The NOEA form would then be filed with EOIR concomitantly with whatever filing was the subject of the preparation. In all other cases—*i.e.*, in which a non-practitioner engages in preparation—no separate form would need to be filed; however, any preparer instructions or disclosure would need to be completed upon assistance of any kind with a form requesting that information.

Thus, the proposed rule covers scenarios in which practitioners or non-practitioners provide only preparation to assist a pro se alien only by drafting, writing, or otherwise completing documents for filing with EOIR; and the filing¹⁰ of those documents.¹¹

1. Scope of Permitted Assistance

This proposed rule would not change the current requirement that a practitioner who wishes to appear in person before EOIR on behalf of an individual must enter a notice of appearance and remains obligated to represent his or her client unless and until an immigration judge permits withdrawal from representation. In this way, the proposed rule would ensure continuity of representation in cases in which a practitioner has entered an appearance while also providing pro se respondents with the opportunity to receive assistance with pleadings, applications, petitions, motions, briefs, or other documents, consistent with the clearer definitions of practice and preparation, from individuals who would not be required to enter a full appearance and incur a continuing representation obligation.

Under the proposed rule, EOIR would consider individuals to be pro se if a

practitioner has not filed an NOEA form noticing that the practitioner is serving as the individual's legal representative in immigration proceedings. The filing of an amended NOEA form indicating that a practitioner has engaged in non-representative practice or preparation would not alter the alien's representation status. As with all pro se respondents, the individuals would remain responsible for their own representation while in court, including receiving notice of upcoming hearings and deadlines. The Department believes that this will help address commenters' concerns that notices and decisions might be sent to representatives who are no longer on the case, instead of being sent to the petitioner or respondent.

Further, EOIR would not recognize a practitioner as an attorney or other representative for the individual unless the practitioner filed an NOEA form for all proceedings or appropriate limited representation related to custody and bond proceedings. The proposed rule neither creates any right or entitlement for alien to obtain such assistance nor provides for Department funds to be put toward that purpose. The Department believes this may help mitigate concerns expressed by NAIJ that limited representation would lead to individuals filing multiple motions for continuance in order to replace counsel who only represent the individual for a short time.

2. Amended NOEA Forms

a. Disclosure of Legal Assistance

For cases involving non-representative practice or preparation, the revised NOEA forms would require the practitioner to provide his or her name, contact information, BAR# or EOIR ID# (as applicable), general nature of work done, and fees charged, as well as to complete an attestation and certification on the NOEA form attesting that the practitioner has explained, and the individual understands, the limited nature of the assistance.¹²

Only practitioners are affected by the proposed rule.¹³ Typically, if an alien has a non-practitioner assist in the

purely clerical task of completing blank spaces on printed forms, there would be no need to file an NOEA form. The non-practitioner, however, still would be required to follow any applicable form instructions for completing the preparer's block.

In adopting these disclosure requirements, the Department agrees with those comments warning against "ghostwriting." Ghostwriting occurs when an unidentified individual assists with, drafts, or writes pleadings, applications, petitions, motions, briefs, or other documents on behalf of a respondent or petitioner, which are filed with EOIR without disclosing the identity of the person who provided assistance. Ghostwritten documents can contain false or fraudulent information, sometimes unbeknownst to respondents and petitioners. They often present substandard, inaccurate, or boilerplate work products. Ghostwriting harms the parties to EOIR proceedings and undermines the integrity of proceedings, candor to the tribunal, and accountability. *See, e.g., Villagordoa Bernal v. Rodriguez*, No. 16-cv-152—CAS, 2016 WL 3360951, at *7 (C.D. Cal. June 10, 2016) ("[T]he parties are reminded that ghostwriting of pro se filings is, of course, inappropriate and potentially sanctionable conduct." (citing *Ricotta v. California*, 4 F. Supp. 2d 961, 986 (S.D. Cal. 1998)); *Tift v. Ball*, No. 07-cv-276—RSM, 2008 WL 701979, at *1 (W.D. Wash. Mar. 12, 2008) ("It is therefore a violation for attorneys to assist pro se litigants by preparing their briefs, and thereby escape the obligations imposed on them under Rule 11."); *Laremont-Lopez v. S.E. Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1078–79 (E.D. Va. 1997) (explaining that ghostwriting causes confusion regarding representation, interferes with the administration of justice, constitutes a misrepresentation to the court under Rule 11, and while "convenient for counsel," disrupts the proper conduct of proceedings); *Clarke v. United States*, 955 F. Supp. 593, 598 (E.D. Va. 1997) ("Notably, the true author of plaintiff's putatively pro se pleadings and supporting documents appears to have had formal legal training. Ghost-writing by an attorney of a 'pro se' plaintiff's pleadings has been condemned as both unethical and a deliberate evasion of the responsibilities imposed on attorneys by Federal Rule of Civil Procedure 11 . . . Thus, if in fact an attorney has ghost-written plaintiff's pleadings in the instant case, this opinion serves as a warning to that attorney that this action may be both unethical and contemptuous."), *vacated*

¹⁰ Filing in this context refers to the legal submission of documents on behalf of a party, rather than to the ministerial act of filing itself. Thus, a practitioner who simply provides to the court a paper submission prepared by another practitioner as a convenience to that practitioner has not engaged in practice or preparation merely by the ministerial act of filing the document.

¹¹ If an individual who does not have an EOIR-ID# (a "non-practitioner") assists with such a document, the non-practitioner would need to comply with the document's instructions, but would not be permitted to file the document with EOIR; the alien could file the document, or a practitioner with knowledge of the contents could file the document by submitting it with an NOEA form. This concept is contemplated in 8 CFR 1292.1 wherein law students and law graduates must file a statement that they are appearing under the "direct supervision" or "supervision," respectively, of a licensed attorney or accredited representative. As such, the supervising attorney or representative would be able to review the substance of the document for which they are principally responsible as the supervisor, and sign and submit an NOEA. This process would help to ensure that EOIR receives filings only from aliens on their own cases or from attorneys and fully-accredited representatives who have completed the requirements of eRegistration.

¹² Attorneys and fully accredited representatives must register with EOIR's electronic registry. EOIR assigns registered users an EOIR ID number. EOIR only assigns EOIR ID numbers to attorneys and fully accredited representatives. EOIR does not assign EOIR ID numbers to other representatives, such as law students, law graduates, reputable individuals, and accredited officials. *See* 8 CFR 1292.1(f).

¹³ "Non-lawyer immigration specialists, visa consultants, and 'notarios,' are *not* authorized to represent parties before an Immigration Court." Immigration Court Practice Manual, chs. 2.1 and 2.7 (Sept. 26, 2019). Nothing in the proposed rule is intended to allow legal assistance by unauthorized individuals.

on other grounds by 162 F.3d 1156 (4th Cir. 1998) (table); *Johnson v. Board of County Com'rs of County of Fremont*, 868 F. Supp. 1226, 1231–32 (D. Col. 1994) (“Moreover, such undisclosed participation by a lawyer that permits a litigant falsely to appear as being without professional assistance would permeate the proceedings. The pro se litigant would be granted greater latitude as a matter of judicial discretion in hearings and trials. The entire process would be skewed to the distinct disadvantage of the nonoffending party Having a litigant appear to be pro se when in truth an attorney is authoring pleadings and necessarily guiding the course of the litigation with an unseen hand is ingenuous to say the least; it is far below the level of candor which must be met by members of the bar.”), *aff'd*, 85 F.3d 489 (10th Cir. 1996). In short, most federal courts condemn the practice of ghostwriting without disclosure of professional legal assistance:

But federal courts have handed down numerous decisions holding that the ghostwriting lawyer breaches a number of ethical duties contained in the current ABA Model Rules of Professional Conduct (MRPC) (or its earlier iterations) or state rules of professional responsibility. These include arguments that a lawyer ghostwriter breaches the duty of candor to the tribunal by making false statements to the court. Some courts go beyond the violation of the candor requirement, holding that to ghostwrite pleadings is an act of fraud, misrepresentation, or deceit. They cite sections of MRPC Rule 8.4, which states that “[i]t is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] (d) engage in conduct that is prejudicial to the administration of justice.”

Jona Goldschmidt, *Ghosting*, 102 *Judicature*3 (2018) (collecting cases) (footnotes omitted).

Ghostwriting is closely related to, and often a vehicle for, *notarios*¹⁴ and other bad actors. These individuals either seek to deceive and mislead respondents, petitioners, and EOIR or, with the acquiescence of respondents and petitioners, seek to perpetuate fraud in and undermine EOIR proceedings. Accordingly, the Department proposes to follow the approach of federal courts regarding ghostwriting, based on

¹⁴ See note 4, *supra*. “Notario” is the short form of “notario publico” and, in the US immigration context, it means someone who is only a notary public but is holding him-/herself out as a “notary public” to prey upon the cultural difference in meaning and authority between the two positions.

concerns not only of misrepresentation to the tribunal regarding whether a respondent is truly pro se but also in order to protect respondents from the unique and significant negative impact *notarios* and other bad actors have on them and their cases in immigration proceedings generally.¹⁵

DOJ believes that the proposed requirements may reduce the ability of *notarios* and other bad actors to operate in immigration proceedings through ghostwriting. Respondents and petitioners, through the proposed rule and education efforts, would know to avoid the assistance of practitioners or other bad actors who are unwilling to identify themselves on documents with which they assist. Practitioners or other bad actors’ refusal to do so would be a clear sign that the respondent or petitioner should seek assistance elsewhere. Further, the identification requirement would enable respondents, petitioners, EOIR, and other authorities to properly address allegations of ineffective assistance of counsel or other issues related to the quality and substance of the limited representation, which may violate EOIR’s Rules of Professional Conduct or state bar rules.

The proposed rule would also require practitioners to disclose the fees they charge when disclosing assistance. The Department agrees with those commenters who identified the risk that unscrupulous attorneys and representatives who seek to overcharge may pose to vulnerable individuals. The Department also agrees with those commenters who argue against EOIR setting fee schedules—whether mandatory or suggested. The Department believes that requiring practitioners to disclose their fees when disclosing out-of-court assistance strikes a reasonable middle ground. Such a disclosure requirement would act as a deterrent to overcharging and, thus, aid in protecting potentially vulnerable individuals. It would also facilitate EOIR’s efforts to enforce its Rules of Professional Conduct prohibiting practitioners from charging “grossly excessive” fees for their services. 8 CFR 1003.102(a). The Department does not intend, however, to use the information collected for any purpose outside of the Department’s System of Records Notice¹⁶ or to involve itself in the fee

¹⁵ For these reasons, the Department does not endorse the conclusion of ABA Formal Opinion 07–446 that ghostwriting did not present a pro se litigant with an unfair benefit.

¹⁶ The Department’s System of Record Notice (“SORN”) provides for system information to be used for “conducting disciplinary investigations and instituting disciplinary proceedings against immigration practitioners.” See *Notice of New*

arrangements between practitioners and clients.

b. Certification and Attestation

Upon issuance of a final rule on this topic, the Department would also amend its NOEA forms to include—for cases involving non-representative practice and preparation—a practitioner’s attestation that he or she explained to the alien the limited scope of the assistance being provided and that the practitioner believes the alien understood the limited representation. It would also require a certification by the individual verifying that he or she understands the limited nature of the assistance. In adopting these requirements, the Department agrees with those comments that reasoned that a certification and attestation requirement would help “create accountability for attorneys and representatives” and prevent clients from being “misled to think that the attorney or representative would be representing them from beginning to end.” This new attestation, while always presumed from practitioners under applicable ethics rules, could help deter fraud; a practitioner may be wary of submitting a document with a false attestation to a federal agency. Further, the certification requirement will help protect practitioners from unfounded complaints of ineffective assistance of counsel.

The Department notes that nothing in the amended NOEA forms requires practitioners to provide details as to legal strategy. Accordingly, contrary to some comments, the additional attestation would not intrude upon attorney-client privileged information.¹⁷

C. Conforming Changes to Custody and Bond Proceedings

The proposed rule would make conforming changes to the provisions governing limited appearances for custody and bond proceedings, requiring the disclosure of non-

System of Records, 64 FR 49237 (Sept. 10, 1999). Grossly excessive fees discovered through the established complaint process may result in evaluation of this filing within the bounds of the investigation and the use of the information under the SORN.

¹⁷ The Department notes that other jurisdictions that allow for limited representation similarly require such certification. See, e.g., D. Kan. Rule 83.5.8(a) (establishing that a lawyer may limit the scope of representation in civil cases if the limitation is reasonable under the circumstances and the client gives informed consent in writing); Administrative Order No. 2019, 01, T.C. (May 10, 2019) (allowing for limited representation in United States Tax Court and requiring that practitioners file with the court a “Limited Entry of Appearance” form that “contains an executed acknowledgement by petitioner(s)”).

representative practice or preparation by practitioners in those proceedings.

D. Professional Conduct for Practitioners

Consistent with the changes to the definitions of “practice,” “preparation,” and “representation” in the proposed rule, and with the allowance for non-representative practice with disclosure, the proposed rule would also amend 8 CFR 1003.102(t) to provide that a practitioner who engages in practice or preparation as the terms are defined in § 1001.1(i) and (k) and fails to submit a signed and completed NOEA form as required by § 1003.17 or § 1003.38 would be subject to disciplinary sanction in the public interest. The current version of 8 CFR 1003.102(t) is premised on confusing definitions of “practice” and “preparation” and requires a pattern or practice of failing to submit an NOEA form before disciplinary action may be taken. In light of the clearer definitions of “practice” and “preparation” in the proposed rule and the allowance of non-representative practice, the Department views the “pattern or practice” requirement as no longer necessary in order to appropriately enforce the rules of professional conduct for practitioners. Moreover, because practitioners may engage in non-representative practice outside of court under the proposed rule, the importance of the disclosure requirements of the NOEA forms for both aliens and immigration judges is heightened, and the damage from just one instance of failing to file the appropriate form is accordingly greater. Consequently, the proposed rule deletes the requirement that there must be a pattern or practice of failing to file NOEA forms before a disciplinary sanction may result.

The Department of Homeland Security (“DHS”) maintains its own definitions of practice, preparation, and representation in 8 CFR 1.2 that are similar, though not identical, to the definitions utilized by the Department in 8 CFR 1001.1. DHS also relies on the categories enumerated in 8 CFR 1003.102 as a basis to impose disciplinary sanctions on individuals who practice before it pursuant to 8 CFR 292.3; however, 8 CFR 1003.102(t) cross-references only the Department’s definitions of practice, preparation, and representation in 8 CFR 1001.1, and not DHS’s definitions. Thus, the Department’s proposal to change those definitions to account for activities unique to court proceedings, such as the drafting of motions or briefs with electing to represent an alien in open court, may unintentionally impede

DHS’s ability to discipline those who practice before it. Accordingly, the Department is also amending 8 CFR 1003.102(t) to make clear that it also applies to the relevant definitions regarding practice, preparation, and representation before DHS in 8 CFR 1.2.

Finally, the proposed rule makes conforming changes to 8 CFR 1003.102(u) to make clear that practice provided by 8 CFR 1001.1(i)(2) may still be subject to disciplinary sanctions if the practice indicates a substantial failure to competently and diligently represent the client.

E. Access to Records of Proceedings

The proposed rule would not expand access to records of proceedings beyond the current law. Records of proceedings typically contain sensitive information protected from third-party disclosure by the Privacy Act, asylum confidentiality regulations, and other laws. Existing mechanisms, such as the Freedom of Information Act (“FOIA”), are sufficient for third parties to obtain access to such records. Under current practice, the record of proceedings is readily available for review by the alien and the alien’s attorney or representative of record. Moreover, except in rare cases involving classified information or the issuance of a protective order or in cases involving in absentia hearings, every immigration court order and every document considered by an immigration judge in adjudicating a respondent’s case is served on the respondent. Thus, an individual who wishes to assist an alien in immigration proceedings may quickly and easily obtain information or documents about a case directly from the alien.

Alternatively, that individual may obtain access to the record of proceedings by choosing to serve as the respondent’s representative of record or by filing a FOIA request. Against the backdrop of applicable privacy and confidentiality laws, the presence of these multiple avenues of access to records of proceedings by those wishing to assist aliens in immigration proceedings strikes the proper balance between facilitating legal assistance and protecting sensitive information of respondents.

V. Regulatory Requirements

A. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Practitioners who wish to represent aliens in person in immigration proceedings are already required to submit an NOEA form, and all individuals who prepare an application form for an alien are already required to disclose such preparation if the form requires it. Although this proposed rule will require practitioners who provide legal assistance to aliens outside of court but do not formally represent them in court to submit an NOEA form, most, if not all, such practitioners are already well-versed in submitting the form for cases in which they do represent an alien in immigration court proceedings. Further, the number of practitioners who solely provide preparation for a filing that does not otherwise require disclosure of such preparation will be exceedingly small because most practitioners do not solely provide preparation and all common immigration applications already require disclosure of preparation. Moreover, the form is not expected to be time-consuming and will involve only providing information the involved practitioner or other person providing assistance already knows well—*i.e.* their own contact information.

B. Unfunded Mandates Reform Act of 1995

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

C. Congressional Review Act

This proposed rule is not a major rule as defined by section 804 of the Congressional Review Act. This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Orders 12866, 13563, and 13771

The Department has determined that this rulemaking is a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this proposed rule has been submitted to the Office of Management and Budget

(“OMB”) for review. This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation; in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation; and in accordance with Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

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 using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Similarly, Executive Order 13771 requires agencies to manage both the public and private costs of regulatory actions.

The rule imposes no new costs on either the Government or on practitioners or aliens. Immigration court personnel, including immigration judges, are already well-versed and familiar with reviewing existing NOEA forms. Further, as practitioners are expected to adhere to the rules of practice in fulfillment of ethical and professional responsibility obligations, the proposed rule should not increase disciplinary actions against practitioners or otherwise increase the time spent by immigration court personnel reviewing filings.

As discussed above, practitioners who wish to represent aliens in person in immigration proceedings are already required to submit an NOEA form, and all individuals who prepare an application form for an alien are already required to disclose such preparation if the form requires it. Thus, this proposed rule adds no new requirements to most immigration court filings or for practitioner behavior. Although this proposed rule will require practitioners who provide legal assistance to aliens outside of court but do not formally represent them in court to submit an NOEA form, most, if not all, such practitioners are already well-versed in submitting the form for cases in which they do represent an alien in immigration court proceedings. Further, the number of practitioners who solely provide preparation for a filing that does not otherwise require disclosure of such preparation is negligible. Moreover, the

form, which mirrors existing forms, will not add any significant time burden and will involve only a writing of information the involved practitioner or other person providing assistance already knows well—*i.e.*, their own contact information.

Thus, for the reasons explained above, the expected costs of this proposed rule are likely to be de minimis. This proposed rule is accordingly exempt from Executive Order 13771. *See* Office of Mgmt. & Budget, *Guidance Implementing Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs* (2017).

E. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (“PRA”), no person is required to respond to a federal collection of information unless the agency has in advance obtained a control number from OMB. In accordance with the PRA, the Department has submitted requests to OMB to revise the currently approved information collections contained in this proposed rule: Form EOIR–26, Notice of Appeal from a Decision of an Immigration Judge; Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals; and Form EOIR–28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court. These information collections were previously approved by OMB under the provisions of the PRA, and the information collections were assigned OMB Control Number 1125–0002 for the EOIR–26, 1125–0005 for Form EOIR–27, and 1125–0006 for Form EOIR–28. Through this notice of proposed rulemaking, the Department invites comments from the public and affected agencies regarding the revised

information collections. Comments are encouraged and will be accepted for 60 days in conjunction with the proposed rule. Comments should be directed to the address listed in the **ADDRESSES** section at the beginning of this preamble. Comments should also be submitted to the Office of Management and Budget, Office of the Information and Regulatory Affairs, Attention: Desk Officer for EOIR, New Executive Building, 725 17th Street NW, Washington, DC 20053. This process is in accordance with 5 CFR 1320.10.

If you have any suggestions or comments, especially on the estimated public burden or associated response time, or need a copy of the proposed information collection instruments with instructions or additional information, please contact the Department as noted above. Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged.

Comments on the proposed information collections should address one or more of the following four points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; or (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Based on the proposed rule, the currently approved information collection instruments will need to be revised. The revised Form EOIR–27 will continue to be used by practitioners to enter an appearance before the Board of Immigration Appeals on appeals related to immigration judge decisions, DHS officer decisions, fines, and disciplinary proceedings. The revised Form EOIR–28 will continue to be used by practitioners to enter an appearance before the immigration court to represent aliens in removal or bond proceedings or to represent an individual in a practitioner disciplinary proceeding. Forms EOIR–27 and EOIR–28 also will be revised to allow practitioners to disclose non-representative practice or preparation as

described above. All of the information required under the current information collection will continue to be required by the revised form. The Department invites comments as to whether additional changes need to be made to the forms to more clearly attest to consent received for representation, where appropriate, and certification that the alien understands the scope of the limited representation being provided.

Under the current information collection, which is not used for limited representation, the estimated average time to review and complete the forms is six minutes. The Department estimates that when disclosing non-representative practice or preparation, the average time to review and complete the forms will be eight minutes rather than the current six minutes, adding an additional two minutes to provide fee information and complete the attestation and certification. The total public burden of these revised collections are estimated to be 6,728,232 burden hours annually ((for Form EOIR-27, 53,816 respondents (FY 2019) × 1 response per respondent × 8 minutes per response = 7,175.5 burden hours) + (for Form EOIR-28, 787,213 respondents (FY 2019) × 1 response per respondent × 8 minutes per response = 104,961.73 burden hours) = 112,137.23 burden hours). The number of estimated responses was derived from the average annual responses received for the past three fiscal years for each form. Eight minutes was used for all responses to estimate the maximum burden possible to the public. The Department expects that the total number of responses received annually for each form may increase as the rule creates additional appearance types than what was previously permitted before EOIR, but is unable to estimate at this time how much of an increase is expected since receipts may not increase at all but just change in type of appearance.

There are no capital or start-up costs associated with these information collections. There are also no fees associated with filing these information collections. The estimated public cost is a maximum of \$6,355,938.20. This amount is reached by multiplying the burden hours (112,137.23) by \$56.68, which represents the current median hourly wage for attorneys, as set by the Bureau of Labor Statistics. The amount \$6,355,938.20 represents the maximum estimate of cost burden. EOIR notes that this form is submitted by an immigration practitioner, including attorneys or accredited representatives; as such, respondents are not likely to retain a practitioner separately to assist them in filling out the forms. Forms

EOIR-27 and EOIR-28 burden expectation is two minutes more per form than the current estimate of six minutes per form, so the burden hours noted are inflated as compared to the increase of burden on the public.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organizations and functions (Government agencies).

Accordingly, for the reasons set forth in the preamble, the Department of Justice proposes to amend parts 1001 and 1003 of chapter V of title 8 of the Code of Federal Regulations as follows:

PART 1001—DEFINITIONS

- 1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107-296, 116 Stat. 2135; Title VII of Pub. L. 110-229.

- 2. Amend § 1001.1 by revising paragraphs (i), (k), and (m) to read as follows:

§ 1001.1 Definitions.

* * * * *

(i) The term *practice* means the act or acts of giving of legal advice or exercise of legal judgment on any matter or potential matter before or with EOIR and

(1) Appearing in any case in person on behalf of another person or client in any matter before or with EOIR, including the act or acts of appearing in open court and submitting, making, or filing pleadings, briefs, motions, forms, applications, or other documents or otherwise making legal arguments or advocating on behalf of a respondent in open court, or attempting to do any of the foregoing on behalf of a respondent; or

(2) Assisting in any matter before or potentially before EOIR through the drafting, writing, filing or completion of any pleading, brief, motion, form, application, or other document that is submitted to EOIR, on behalf of another person or client.

* * * * *

(k) The term *preparation* means the act or acts consisting solely of clerical assistance in the completion of forms, applications, or documents that are to be filed with or submitted to DHS, or any immigration judge or the Board, where such acts do not include the

provision of legal advice or exercise of legal judgment; however, *preparation* before DHS is defined in accordance with 8 CFR 1.2. A practitioner may engage in preparation without engaging in practice or representation provided the preparation does not include the provision of legal advice and is disclosed in accordance with 8 CFR 1003.17 or 8 CFR 1003.38.

* * * * *

(m) The term *representation* before EOIR includes practice as defined in paragraph (i) of this section; however, *representation* before DHS is defined in accordance with 8 CFR 1.2. A practitioner may not engage in practice as defined in paragraph (i)(1) of this section without engaging in representation. A practitioner may engage in practice as defined in paragraph (i)(2) of this section without engaging in representation provided the practice is disclosed in accordance with 8 CFR 1003.17 or 8 CFR 1003.38.

* * * * *

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

- 3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, 111 Stat. 2196-200; sections 1506 and 1510 of Pub. L. 106-386, 114 Stat. 1527-29, 1531-32; section 1505 of Pub. L. 106-554, 114 Stat. 2763A-326 to -328.

- 4. Revise § 1003.17 to read as follows:

§ 1003.17 Appearances.

(a) In any proceeding before an immigration judge in which the alien is represented, the attorney or representative shall file Form EOIR-28 with the immigration court and shall serve a copy of Form EOIR-28 on the DHS as required by § 1003.32(a). The entry of appearance of an attorney or representative in a custody or bond proceeding shall be separate and apart from an entry of appearance in any other proceeding before the immigration court. In each case where the respondent is represented, as defined in 8 CFR 1001.1(m), and the attorney or representative has filed Form EOIR-28, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name. An attorney or representative may file Form EOIR-28 indicating whether the entry of appearance as an attorney or

representative is for custody or bond proceedings only, for all proceedings other than custody and bond proceedings, or for all proceedings. Such Notice of Entry of Appearance must be filed and served even if a separate Notice of Entry of Appearance has been filed with DHS, or with EOIR for appearances before DHS, or with EOIR for appearances before EOIR.

(b) No individual may engage in practice as defined in 8 CFR 1001.1(i), including exercising or waiving a respondent's rights, or otherwise advocating in a legal capacity on behalf of a respondent in open court without filing Form EOIR-28 noticing that individual's entry of appearance as a respondent's legal representative.

(c) Withdrawal or substitution of an attorney or representative engaged in representation may be permitted by an immigration judge during proceedings only upon oral or written motion submitted without fee. No such withdrawal motion is necessary when the original notice of entry of appearance was for a noted purpose limited to custody and bond proceedings or proceedings other than custody or bond.

(d) A practitioner who engages in practice as defined in 8 CFR 1001.1(i) but not representation, must file Form EOIR-28 disclosing the practice. A practitioner who engages in preparation as defined in 8 CFR 1001.1(k) must file Form EOIR-28 disclosing the preparation. No subsequent withdrawal motion is necessary for Form EOIR-28 filed under this paragraph (d), but a new Form EOIR-28 must be filed for each subsequent act of preparation or practice that does not constitute representation.

(e) Any practitioner required to submit Form EOIR-28 under this paragraph must comply with all instructions on Form EOIR-28. The practitioner must complete the appropriate section on Form EOIR-28 indicating whether the practitioner is representing the individual, has engaged in practice but not representation, or has engaged in preparation. For practitioners who have engaged in practice but not representation or in preparation, Form EOIR-28 must include an attestation from the practitioner that he or she has communicated to the client in a language understood by that client the exact parameters of the professional services or relationship agreed to and a certification from the client and that the client has understood this communication, as described in the instructions to Form EOIR-28.

(f) Nothing in this section shall be construed as relieving the preparer of an application or form that requires disclosure of the preparation from complying with the disclosure requirements of the application or form, or as relieving a practitioner from the requirement to file Form EOIR-28 with the immigration court when the practitioner has engaged in practice as defined in 8 CFR 1001.1(i).

(g) Nothing in this section shall be construed as limiting an individual's privilege of being represented (at no expense to the government) by counsel authorized to practice by EOIR in removal proceedings before an immigration judge.

* * * * *

■ 5. Amend § 1003.38 by revising paragraph (g) and adding paragraphs (h) through (l) to read as follows:

§ 1003.38 Appeals.

* * * * *

(g) In any proceeding before the Board in which the alien is represented, as defined in 8 CFR 1001.1(m), the attorney or representative shall file Form EOIR-27 with the Board and shall serve a copy of Form EOIR-27 on the DHS as required by 8 CFR 1003.32(a). In each case where the respondent is represented, and the attorney or representative has filed Form EOIR-27, every motion or other filing shall be signed by the practitioner of record in his or her individual name.

(h) No individual may engage in practice as defined in 8 CFR 1001.1(i), including exercising or waiving a respondent's rights or otherwise orally advocating in a legal capacity on behalf of an alien, without filing Form EOIR-27 noticing that individual's entry of appearance as a respondent's legal representative.

(i) Withdrawal or substitution of an attorney or representative may be permitted by the BIA only upon written motion submitted without fee.

(j) For cases at the BIA:

(1) A practitioner who engages in practice as defined in 8 CFR 1001.1(i), but not representation, must file Form EOIR-27 disclosing the practice.

(2) A practitioner who engages in preparation as defined in 8 CFR 1001.1(k) must file Form EOIR-27 disclosing the preparation.

(3) No subsequent withdrawal motion is necessary for an EOIR-27 filed under paragraph (j) of this section, but a new EOIR-27 must be filed for each subsequent act of preparation or of practice that does not constitute representation.

(k) Any practitioner required to submit Form EOIR-27 under this

section must comply with all instructions on Form EOIR-27. The practitioner must complete the appropriate section on the Form indicating whether the practitioner is representing the individual, has engaged in practice but not representation, or has engaged in preparation. For practitioners who have engaged in practice but not representation or in preparation, Form EOIR-27 must include an attestation from the practitioner that he or she has communicated to the client in a language understood by that client the exact parameters of the professional relationship being agreed to and a certification from the client that the client has understood this communication, as described in the instructions to Form EOIR-27.

(l) Nothing in this paragraph shall be construed as relieving the preparer of an application or form that requires disclosure of the preparation from complying with the disclosure requirements of the application or form, or as relieving a practitioner from the requirements to file Form EOIR-27 with the BIA when the practitioner has engaged in practice as defined in 8 CFR 1001.1(i).

■ 6. Amend § 1003.102 by:

■ a. Removing the words "Immigration Court" wherever they appear and adding, in their place, the words "immigration court";

■ b. Removing the words "Immigration Courts" wherever they appear and adding, in their place, the words "immigration courts";

■ c. Revising paragraphs (t) and (u) to read as follows:

The revisions read as follows:

§ 1003.102 Grounds.

* * * * *

(t) Engages in representation as that term is defined in 8 CFR 1.2 or 1001.1(m), practice as the term is defined in 8 CFR 1.2 or 1001.1(i), or preparation as that term is defined in 8 CFR 1.2 or 1001.1(k), and fails to submit a signed and completed Form EOIR-27, Form EOIR-28, or Form G-28 in compliance with applicable rules and regulations, including 8 CFR 1003.17 and 1003.38. In each case where the respondent is represented and the attorney or representative has filed a Notice of Entry of Appearance as Attorney or Representative, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name.

(u) Repeatedly drafts notices, motions, briefs, or claims that are later filed with DHS or EOIR that reflect little or no attention to the specific factual or legal

issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client; or

* * * * *

Dated: September 2, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020-20045 Filed 9-29-20; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2020-BT-TP-0002]

RIN 1904-AE85

Energy Conservation Program: Definition of Showerhead

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

ACTION: Extension of public comment period.

SUMMARY: The U.S. Department of Energy ("DOE") is extending the public comment period for the notice of proposed rulemaking ("NOPR") regarding proposals to amend the regulatory definition of the statutory term "showerhead." DOE published the NOPR in the **Federal Register** on August 13, 2020, establishing a 32-day public comment period ending September 14, 2020. Subsequently, DOE published a notification of public meeting (webinar) and extension of comment period on August 31, 2020, extending the comment period until September 30, 2020. On September 15, 2020, DOE received a comment requesting further extension of the comment period to a total of 90 to 120 days. DOE is extending the public comment period for submitting comments and data on the NOPR document by an additional 14 days, to October 14, 2020 for a total of a 62 day comment period.

DATES: The comment period for the NOPR published on August 13, 2020 (85 FR 49284), and extended on August 31, 2020 (85 FR 53707), is further extended. DOE will accept comments, data, and information regarding this NOPR received no later than October 14, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket

number EERE-2020-BT-TP-0002, by any of the following methods:

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

2. *Email:* Showerheads2020TP0002@ee.doe.gov. Include the docket number EERE-2014-BT-TP-0002 in the subject line of the message.

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

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

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

The docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2020-BT-TP-0002>. The docket web page contains instructions on how to access all documents, including public comments in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-0371. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-7796. Email: Elizabeth.Kohl@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket contact

the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On August 13, 2020, DOE published a NOPR in the **Federal Register** soliciting public comment on a proposal to amend the regulatory definition of the statutory term "showerhead." 85 FR 49284. Comments were originally due on September 14, 2020. Subsequently, DOE published a notification of public meeting (webinar) and extension of comment period on August 31, 2020, extending the comment period until September 30, 2020. 85 FR 53707. On September 15, 2020, DOE received a comment from Appliance Standards Awareness Project ("ASAP"), Alliance for Water Efficiency, American Council for an Energy-Efficient Economy ("ACEEE"), Consumer Federation of America, the Northwest Energy Efficiency Alliance ("NEEA"), and Natural Resources Defense Council ("NRDC") to extend to a total of 90 to 120 days the DOE comment period for the NOPR.¹ DOE has reviewed the request and considered the benefit to stakeholders in providing additional time to review the NOPR, and gather information/data that DOE is seeking. Accordingly, DOE has determined that an extension of the comment period is appropriate, and is hereby extending the comment period by an additional 14 days, until October 14, 2020 for a total of a 62 day comment period.

Signing Authority

This document of the Department of Energy was signed on September 22, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

¹ DOE has posted this comment to the docket at <http://www.regulations.gov/document?D=EERE-2020-BT-TP-0002-0040>.

Signed in Washington, DC, on September 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020-21210 Filed 9-29-20; 8:45 am]

BILLING CODE 6450-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG93

Regulatory Reform Initiative: Small Business Investment Company—Regulatory Streamlining

AGENCY: U. S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (“SBA” or “Agency”) is proposing to remove from the Code of Federal Regulations (“CFR”) eighteen regulations that are no longer necessary because they are obsolete, inefficient or redundant. Many of the regulations SBA is proposing to remove apply to Specialized Small Business Investment Companies (“SSBICs”) licensed under the now-repealed Section 301(d) of the Small Business Investment Act of 1958, as amended, and certain other types of Small Business Investment Companies (“SBICs”) that SBA no longer licenses, such as Participating Securities SBICs and Early Stage SBICs. The removal of these regulations will assist the public by simplifying SBA’s regulations in the CFR. In addition, SBA is proposing to amend its regulations, consistent with recent statutory changes, to increase the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million.

DATES: Comments must be received on or before November 30, 2020.

ADDRESSES: You may submit comments, identified by RIN: 3245-AG93, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail or Hand Delivery/Courier:* Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (“CBI”), as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Louis Cupp, New

Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to Louis.Cupp@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Louis Cupp, New Markets Policy Analyst, 202-619-0511, Louis.Cupp@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Small Business Investment Company Program

SBA’s SBIC program is designed to enhance small business access to capital by stimulating and supplementing “the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.” Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, *et seq.* (the “Act”). The SBIC program’s primary objective is to “improve and stimulate the national economy in general and the small-business segment thereof in particular.” *Id.*

SBICs are privately owned and managed investment funds, licensed and regulated by SBA, that use capital raised from private investors (what SBA generally refers to as “Regulatory Capital”) to make equity and debt investments in qualifying small businesses. SBICs pursue investments in a broad range of industries, geographic areas, and stages of investment. SBA licenses many SBICs to issue SBA-guaranteed debentures (“Debentures”), an unsecured debt instrument, typically with a 10-year term, the repayment of which is guaranteed by SBA using the full faith and credit of the United States. SBA typically authorizes SBICs to issue Debentures up to a maximum of two times an SBIC’s Regulatory Capital, but not to exceed \$175 million per SBIC. Debentures are typically sold in public offerings twice a year. This process allows SBICs to borrow at favorable interest rates and increases the amount of investable capital available to SBICs to invest in small businesses.

From the inception of the SBIC program to December 31, 2019, SBICs have invested approximately \$103.5 billion in approximately 184,135 financings to small businesses. In fiscal

year 2019, SBICs invested \$5.86 billion in 1,191 small businesses. As of December 31, 2019, there were a total of 299 licensed and operating SBICs with Regulatory Capital of approximately \$17 billion. In addition, as of December 31, 2019, SBA had guaranteed outstanding Debentures or had outstanding commitments to guarantee Debentures to SBICs in the approximate aggregate amount of \$14.5 billion.

B. Part 107, Small Business Investment Companies

SBA is proposing to remove from the CFR eighteen regulations that are no longer necessary, because the rules reflect statutes that have been repealed, do not have any current or future applicability, or are otherwise inefficient or unnecessary. Specifically, SBA is proposing to remove eight regulations relating to SSBICs (also referred to as “Section 301(d) Licensees”). Prior to 1996, Section 301(d) of the Act authorized SBA to issue licenses to SSBICs, which were required to invest “solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages[.]” Section 301(d) was repealed by Section 208(b)(3)(A) of Public Law 104-208, enacted September 30, 1996 (the “Improvement Act of 1996”). Section 208(b)(3)(B) of the Improvement Act of 1996 provided, “[t]he repeal under subparagraph (A) shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act.” As a result, no new SSBIC licenses have been issued since October 1, 1996, but existing SSBICs have been allowed to remain in the program. The Improvement Act of 1996 also repealed the special kinds of financial assistance (“Subsidized Leverage”) that SBA previously made available to SSBICs under former Section 303(c) of the Act. Such Subsidized Leverage was previously available to SSBICs in the form of Debentures with an interest rate subsidy or certain types of preferred stock (“Preferred Securities”) with a specified dividend. Although Subsidized Leverage can no longer be issued, the Improvement Act of 1996 did not require SSBICs to prepay or redeem such Subsidized Leverage prior to its scheduled maturity. Approximately six SSBICs are currently operating, but no Subsidized Leverage

remains outstanding, so SBA proposes to remove the regulations related to Subsidized Leverage. The SSBICs remaining in the program will not be impacted by the changes proposed in this rule and, if eligible, those SSBICs may continue to apply to issue standard Debentures.

SBA is proposing to remove four regulations relating to Participating Securities (as defined in 13 CFR 107.50) and SBICs that issued Participating Securities (“Participating Securities SBICs”). The fees payable by Participating Securities SBICs were not sufficient to cover the projected net losses of the Participating Securities program and no funds have been appropriated for this program for over 15 years. As a result, since October 1, 2004, SBA has not been able to issue new commitments for Participating Securities. Approximately 25 Participating Securities SBICs remain operating in the program, but the last Participating Securities issued by Participating Securities SBICs were required to be redeemed by February 2019. The changes proposed in this rule will not impact any licensed Participating Securities SBIC.

SBA is proposing to remove two regulations relating to a category of SBICs created in 2012 by regulation, in which SBICs were required to invest at least fifty percent of their capital in early stage small businesses (“Early Stage SBICs”). The final rule (77 FR 25042, April 27, 2012) defining this category of Early Stage SBICs stated that SBA’s intent was to license Early Stage SBICs over a 5-year period (fiscal years 2012 through 2016). SBA published a rule on September 19, 2016 (81 FR 64075) proposing to make the Early Stage SBIC initiative a permanent part of the SBIC program, but withdrew the proposed rule on June 11, 2018 (83 FR 26875) because, among other things, few qualified funds applied to the Early Stage SBIC initiative and the comments to the proposed rule did not demonstrate broad support for a permanent Early Stage SBIC program. SBA proposes to remove the licensing regulations related to Early Stage SBICs since SBA is no longer licensing these funds. The removal of these regulations will have no impact on the Early Stage SBICs remaining in the program.

Finally, SBA is proposing to remove four regulations that are duplicative, redundant, or otherwise inefficient or unnecessary. In connection with this rulemaking, SBA proposes certain non-substantive amendments to other regulations to remove internal references to the removed regulations or make certain other clarifying changes.

SBA is also proposing one clarifying change unrelated to the removal of these regulations, but which is required by amendments to the Act that occurred in 2018. SBA is proposing to increase the maximum amount of Leverage (as defined in 13 CFR 107.50) available to a single SBIC from \$150 million to \$175 million.

C. Comments Received in Response To Request for Information

On August 15, 2017 (82 FR 38617), SBA published in the **Federal Register** a request for information seeking input from the public on identifying which of the Agency’s regulations should be repealed, replaced, or modified because they are obsolete, unnecessary, ineffective, or burdensome. On October 13, 2017 (82 FR 47645), SBA extended the comment period. SBA has reviewed the comments submitted by the public in response to that request. Further, in an effort to obtain additional feedback from SBIC program stakeholders, SBA held a series of roundtables with SBICs, third-party service providers, and investors on May 22, 2018, July 17, 2018, and August 7, 2018, respectively.

The comments SBA received addressed many aspects of the SBIC program and provided SBA with a better understanding of certain focus-areas of the regulations that program participants and stakeholders are concerned about. In this rule, SBA is proposing to remove certain regulations that commenters suggested removing—*e.g.*, certain Participating Securities SBIC and Early Stage SBIC regulations—and proposing to remove certain others, which SBA believes will have broad support among program participants. SBA understands that this rulemaking does not address all comments and suggestions SBA has received from the public. To that end, SBA is continuing to review the regulations in part 107, and those in part 121 that are applicable to the SBIC program, to determine which regulations SBA believes are most appropriate for removal, streamlining, clarification, or updating. Once that process is complete, SBA intends to propose certain additional changes to its regulations.

D. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency’s regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless

prohibited by law, this Executive Order requires the agency to: (i) Identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation. SBA believes the removal of the regulations identified herein will make part 107 less confusing and less burdensome for the reader and quantifies the amount of cost savings that may result from this rulemaking in the Executive Order 13771 discussion in Section III below.

E. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: Eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

II. Section by Section Analysis

A. Section 107.50—Definition of Terms

SBA is proposing to amend 13 CFR 107.50 to revise the definition of “Venture Capital Financing.” Currently, this definition states that the term is as defined in 13 CFR 107.1160. SBA is proposing to remove 13 CFR 107.1160, but needs to retain this definition in the regulations because other sections use the defined term. Therefore, SBA is proposing to move the current definition in 13 CFR 107.1160 to 13 CFR 107.50. SBA is not proposing substantive changes to the definition.

In addition, SBA is proposing to revise the definition of “Early Stage SBIC” in 13 CFR 107.50 to remove the reference to 13 CFR 107.310, because SBA is proposing to remove that regulation. SBA is proposing to revise the definition to clarify that an Early Stage SBIC is one that was licensed in connection with SBA’s Early Stage SBIC

initiative. SBA is also proposing to revise the definition to reference redesignated 13 CFR 107.1810(f)(10) rather than current 13 CFR 107.1810(f)(11) but is not proposing any substantive changes to the definition.

B. Section 107.120—Special Rules for a Section 301(d) Licensee Owned by Another Licensee

This regulation currently addresses the requirements for ownership of an SSBIC by another SBIC. SBA no longer licenses SSBICs and no SBIC has utilized the structure authorized under this regulation in the recent history of the program. Further, because Subsidized Leverage is no longer available to SSBICs, such a structure would provide little to no benefit to an SBIC, economic or otherwise. For that reason, SBA believes that no SBIC will seek to be structured in the form authorized under this regulation going forward and, accordingly, proposes to remove this section.

C. Section 107.160—Special Rules for Licensees Formed as Limited Partnerships

This regulation currently provides for special rules applicable to SBICs formed as limited partnerships. SBA is not proposing substantive changes to this regulation. Rather, since this regulation contains a reference to a regulation that SBA is proposing to remove, 13 CFR 107.460, SBA is proposing to amend subsection (d) of 13 CFR 107.160 solely to remove this reference.

D. Section 107.250—Exclusion of Stock Options Issued by Licensee From Management Expenses

This regulation currently provides that stock options issued by any SBIC are not considered compensation and do not count as part of an SBIC's management expenses. Substantially all SBICs are formed as limited partnerships, which do not issue stock options. Further, Management Expenses are expressly defined in current 13 CFR 107.520(a), and that definition does not include stock options. Accordingly, the few SBICs formed as corporations do not rely on current 13 CFR 107.250. SBA proposes to remove this section, because it is no longer necessary.

E. Section 107.310—When and How To Apply for Licensing as an Early Stage SBIC

This regulation currently sets forth the application procedures for Early Stage SBIC applicants. As described above, SBA no longer licenses Early Stage SBICs. Therefore, SBA proposes to remove this section.

F. Section 107.320—Evaluation of Early Stage SBICs

This regulation currently sets forth the special evaluation requirements for Early Stage SBIC applicants. Since SBA no longer licenses Early Stage SBICs, SBA is proposing to remove this section.

G. Section 107.460—Restrictions on Common Control or Ownership of Two (or More) Licensees

This regulation currently provides that certain individuals and entities may not, without SBA's prior written approval, exercise control over, or have a greater than ten percent beneficial ownership interest in, two or more SBICs. This regulation is duplicative of the requirements in other SBA regulations. Specifically, sections 107.160, 107.400, and 107.410 require SBA prior approval for any individual or entity to exercise control over, or have a greater than ten percent beneficial ownership interest in, any individual SBIC. Accordingly, this section is not necessary, and SBA proposes to remove it.

H. Section 107.585—Voluntary Decrease in Licensee's Regulatory Capital

SBA does not propose substantive changes to this section but proposes to amend this section to remove internal references to 13 CFR 107.1160 and 107.1170, which sections SBA is proposing to remove in this rulemaking.

I. Sections 107.830—Minimum Duration/Term of Financing and 107.840—Maximum Term of Financing

13 CFR 107.830 (Minimum duration/term of financing) and 13 CFR 107.840 (Maximum term of Financing) each address the term of financing permissible in the SBIC Program—the minimum term and maximum term, respectively. SBA believes that having two regulations that address the same concept is inefficient. Accordingly, SBA is proposing to streamline these regulations by moving the substance of section 107.840 into section 107.830 and proposes to remove section 107.840. SBA does not intend any substantive changes to the minimum or maximum term of financing permitted under the regulations.

J. Section 107.1120—General Eligibility Requirements for Leverage

Subsection (d) of this regulation currently requires, in connection with any Leverage draw that would cause an SBIC and any other commonly controlled SBIC to have aggregate outstanding Leverage in excess of \$150 million, that the SBIC drawing such Leverage certify that none of the

commonly controlled SBICs has a condition of capital impairment. Consistent with the Small Business Investment Opportunity Act of 2017 (Pub. L. 115–187, June 21, 2018), which increased the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million, SBA proposes to amend this regulation to revise the dollar amount from \$150 million to \$175 million. In addition, in connection with the proposed redesignation of certain regulations discussed below, SBA is proposing to amend a reference in subsection (k) of this regulation to refer to 13 CFR 107.1810(f)(10). SBA is not proposing any substantive changes to subsection (k).

K. Section 107.1140—Licensee's Acceptance of SBA Remedies Under §§ 107.1800 Through 107.1820

This regulation provides that all SBICs issuing Leverage after April 25, 1994, automatically agree to the terms and conditions in sections 107.1800 through 107.1820, as they exist at the time of issuance. The section is duplicative of 13 CFR 107.1800, 13 CFR 107.1810 and 13 CFR 107.1820. SBA proposes to remove the section because it is unnecessary. For the avoidance of doubt, all outstanding Leverage remains subject to 13 CFR 107.1810 or 107.1820, as applicable.

L. Section 107.1150—Maximum Amount of Leverage for a Section 301(c) Licensee

This regulation currently addresses the maximum amount of Leverage that SBICs other than SSBICs and Early Stage SBICs may draw. SBA is proposing three changes to this section. First, consistent with the Small Business Investment Opportunity Act of 2017 (Pub. L. 115–187, June 21, 2018), SBA proposes to amend this regulation to increase the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million. Second, SBA proposes to amend this regulation to make it expressly applicable to Section 301(d) Licensees. Currently, 13 CFR 107.1160 (the regulation that applies to Subsidized Leverage for Section 301(d) Licensees) limits Section 301(d) Licensees to the maximum amount of non-Subsidized Leverage available to Section 301(c) licensees. Because SBA is proposing in this rulemaking to remove 13 CFR 107.1160, SBA is proposing to amend 13 CFR 107.1150 to clarify that it applies to Section 301(d) Licensees. Third, SBA is proposing to remove 13 CFR 107.1150(d)(2). Paragraph (d)(2) implemented Section 303(b)(2)(C)(ii) of

the Act, which gave SBICs access to additional Leverage if they made at least fifty percent (in dollar amount) of their investments in low-income geographic areas. See Public Law 111–5 (Feb. 17, 2009). When the maximum Leverage available under Section 303(b)(2)(A)(ii) of the Act to an individual SBIC and under Section 303(b)(2)(B) of the Act to SBICs under common control was increased to \$175 million (Pub. L. 115–187, June 21, 2018) and \$350 million (Pub. L. 114–113, Dec. 18, 2015), respectively, no corresponding change was made to Section 303(b)(2)(C)(ii). As a result, the maximum Leverage limits set forth in that Section of the Act and the implementing regulation at 13 CFR 107.1150(d)(2) are currently lower than the maximum amounts of Leverage available to all debenture SBICs. Paragraph (d)(2) of the regulation, therefore, is not necessary and SBA proposes to remove it.

M. Section 107.1160—Maximum Amount of Leverage for a Section 301(d) Licensee

This regulation currently addresses Subsidized Leverage for Section 301(d) Licensees. No Section 301(d) Licensee currently has any form of Subsidized Leverage outstanding, and, as a result of the Improvement Act of 1996 discussed above, no Section 301(d) Licensee is authorized to issue or draw Subsidized Leverage in the future. SBA proposes to remove this section because it is no longer necessary.

N. Section 107.1170—Maximum Amount of Participating Securities for Any Licensee

This regulation addresses the maximum amount of Participating Securities an SBIC may issue. As discussed above, since October 1, 2004, SBA has not been able to issue new commitments for Participating Securities. Because this section is no longer necessary, SBA proposes to remove it.

O. Sections 107.1400—107.1450 Preferred Securities Leverage—Section 301(d) Licensees

Sections 107.1400 through 107.1450 currently address Subsidized Leverage for Section 301(d) Licensees. No Section 301(d) Licensee currently has any form of Subsidized Leverage outstanding, and, as a result of the Improvement Act of 1996 discussed above, no Section 301(d) Licensee is authorized to issue or draw Subsidized Leverage in the future. SBA proposes to remove these sections because they are no longer necessary.

P. Section 107.1585—Exchange of Debentures for Participating Securities

This section currently addresses the requirements of an exchange of Debentures for Participating Securities. No Participating Securities will be issued in the future. This section, therefore, is obsolete, and SBA proposes to remove it.

Q. Section 107.1590—Special Rules for Companies Licensed on or Before March 31, 1993

This regulation applies to SBICs licensed on or before March 31, 1993, that apply to issue Participating Securities. No SBIC may apply to issue Participating Securities and this rule does not have any current applicability. SBA proposes to remove this section.

R. Section 107.1810—Events of Default and SBA’s Remedies for Licensee’s Noncompliance With Terms of Debentures

SBA proposes to remove 13 CFR 107.1810(f)(9) in its entirety, which is an event of default based solely on the failure to satisfy the investment ratios required under 13 CFR 107.1160(c), a regulation which SBA is proposing to remove in this rulemaking.

S. Section 107.1820—Conditions Affecting Issuers of Preferred Securities and/or Participating Securities

SBA is proposing to amend 13 CFR 107.1820(e)(9) to remove the events of default triggered by noncompliance with 13 CFR 107.1160, a regulation which SBA is proposing to remove in this rulemaking.

T. Section 107.1850—Exceptions to Capital Impairment provisions for Licensees With Outstanding Participating Securities

This regulation currently provides for a forbearance period from application of SBA’s capital impairment regulations for Participating Securities SBICs but only up to the first six years after the first issuance of Participating Securities. Since the last Participating Securities were required to be redeemed in February of 2019, this section has not applied to any SBIC for at least four years. This section is obsolete, and SBA proposes to remove it.

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

A. Executive Order 12866

The Office of Management and Budget (“OMB”) has determined that this

proposed rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

B. Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of \$16,694 and a net present value of \$238,485, both in 2016 dollars. This rule would remove information that is redundant or about obsolete programs, which would reduce confusion around whether these programs still exist. In addition, SBA proposes to increase the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million, consistent with the Small Business Investment Opportunity Act of 2017 (Pub. L. 115–187, June 21, 2018).

There are currently 300 SBIC licensees in operation. These calculations assume that 20% of SBIC licensees (60) read the regulations per year and that they will save 4 hours each from reading less burdensome and less confusing regulations because they will no longer contain obsolete information. This time is valued at \$75.57 per hour—the median wage of an attorney based on 2018 Bureau of Labor Statistics (“BLS”) data adding 30% more for benefits. This produces total savings per year of \$18,137.

In the first year this rule is published, it is expected that 25% of existing SBIC licensees (75) will read this **Federal Register** notice, which will take 2 hours to read. Assuming \$75.57 per hour, the cost in the first year will be \$11,336. This cost is not expected to continue into subsequent years.

Quantifying the effect of an increase in the maximum amount of Leverage available to a single SBIC is difficult, but this will provide SBICs more flexibility and will be beneficial to these entities.

Table 1 displays the costs and savings of this rule over the first two years it is published, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

TABLE 1—SCHEDULE OF COSTS/(SAVINGS) OVER 2 YEAR HORIZON, CURRENT DOLLARS

	Savings	Costs
Year 1	240 hours (\$18,137)	150 hours \$11,336
Year 2	240 hours (\$18,137)	0 hours \$0

TABLE 2—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE, 2016 DOLLARS

	Estimate
Annualized Savings	(\$17,406)
Annualized Costs	712
Annualized Net Savings	(16,694)

C. Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This proposed rule does not have federalism implications as defined in Executive Order 13132. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule does not affect any existing collection of information and does not propose any new collection of information.

F. Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (“RFA”) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

There are currently 300 SBIC licensees in operation and this rule can affect all SBIC licensees. This rule would remove regulations that are no longer necessary, because they are either redundant, inefficient or obsolete. These changes will afford these entities more certainty on how to operate their business in a regulated environment. The annualized net savings to these SBIC licensees is about \$16,694 in current dollars or \$56 per SBIC licensee, as quantified in 2016 dollars in the

Executive Order 13771 discussion above. Quantifying the effect of an increase in the maximum amount of Leverage available to a single SBIC is difficult, but this will provide SBICs more flexibility and will be beneficial to these entities.

Therefore, SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comments from the public on this certification.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 662, 681–687, 687b–h, 687k–m.

■ 2. Amend § 107.50 by revising the definitions of “Early Stage SBIC” and “Venture Capital Financing” to read as follows:

§ 107.50 Definition of terms.

* * * * *

Early Stage SBIC means a Section 301(c) Partnership Licensee, licensed pursuant to SBA’s Early Stage initiative, in which at least 50 percent of all Loans and Investments (in dollars) must be made to Small Businesses that are “early stage” companies at the time of the Licensee’s initial Financing (see also § 107.1810(f)(10)). For the purposes of this definition, an “early stage” company is one that has never achieved positive cash flow from operations in any fiscal year.

* * * * *

Venture Capital Financing means an investment represented by common or preferred stock, a limited partnership interest, or a similar ownership interest; or by an unsecured debt instrument that is subordinated by its terms to all other borrowings of the issuer. A debt secured by any agreement with a third party is not a Venture Capital Financing, whether or not you have a security interest in any asset of the third party or have recourse against the third party. A Financing that originally qualified as a Venture Capital Financing will continue to qualify (at its original cost), even if you later must report it on SBA Form 468 under either Assets Acquired

in Liquidation of Portfolio Securities or Operating Concerns Acquired.

* * * * *

§ 107.120 [Removed and Reserved]

■ 3. Remove and reserve § 107.120.
■ 4. Amend § 107.160(d) by revising the second sentence to read as follows:

§ 107.160 Special rules for Licensees formed as limited partnerships.

* * * * *

(d) * * * The term Licensee, as used in §§ 107.30 and 107.680, includes all of the Licensee’s Control Persons. * * *

* * * * *

§§ 107.250, 107.310, 107.320, and 107.460 [Removed and Reserved]

■ 5. Remove and reserve §§ 107.250, 107.310, 107.320, and 107.460.

■ 6. Amend § 107.585 by revising the second sentence to read as follows:

§ 107.585 Voluntary decrease in Licensee’s Regulatory Capital.

* * * At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 107.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150.

■ 7. Amend § 107.830 by revising the section heading, and paragraphs (a) and (c)(1) to read as follows:

§ 107.830 Duration/term of financing.

(a) General rule. The duration/term of all your Financings must be for a minimum period of one year and the maximum term of any Loan or Debt Security Financing must be no longer than 20 years.

* * * * *

(c) * * *

(1) Term. The term for Loans and Debt Securities starts with the first disbursement of the Financing.

* * * * *

§ 107.840 [Removed and Reserved]

■ 8. Remove and reserve § 107.840.

■ 9. Amend § 107.1120 by revising paragraphs (d) and (k) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of \$175 million, certify that none of the Licensees has a condition of Capital Impairment. See also § 107.1150(b).

* * * * *

(k) If you are an Early Stage SBIC, certify in writing that in accordance with § 107.1810(f)(10), at least 50 percent of the aggregate dollar amount of your financings will be provided to “early stage” companies as defined under the definition of Early Stage SBIC in § 107.50 of this part.

§ 107.1140 [Removed and Reserved]

- 10. Remove and reserve § 107.1140.
- 11. Amend § 107.1150 by:
 - a. Revising the section heading;
 - b. Revising the first sentence of the introductory paragraph;
 - c. Revising paragraph (a)(2);
 - d. Revising the second sentence of paragraph (b); and
 - e. Removing paragraph (d)(2).

The revisions read as follows:

§ 107.1150 Maximum amount of Leverage. A Licensee, other than an Early Stage SBIC, may have maximum outstanding Leverage as set forth in paragraphs (a), (b), (d), and (e) of this section. * * *

(a) * * *

(2) \$175 million.

(b) * * * However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed \$175 million, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. See also § 107.1120(d).

* * * * *

§§ 107.1160, 107.1170, 107.1400 through 107.1450, 107.1585, and 107.1590 [Removed and Reserved]

- 12. Remove and reserve § 107.1160, 107.1170, 107.1400 through 107.1450, 107.1585, and 107.1590.

§ 107.1810 [Amended]

- 13. Amend § 107.1810 by removing paragraph (f)(9) and redesignating paragraphs (f)(10) through (f)(12) as (f)(9) through (f)(11).
- 14. Amend § 107.1820 by revising paragraph (e)(9) to read as follows:

§ 107.1820 Conditions affecting issuers of Preferred Securities and/or Participating Securities.

* * * * *

(e) * * *

(9) *Failure to meet investment requirements.* You fail to make the amount of Equity Capital Investments required for Participating Securities (§ 107.1500(b)(4)), if applicable to you.

* * * * *

§ 107.1850 [Removed and Reserved]

- 15. Remove and reserve § 107.1850.

Jovita Carranza,
Administrator.

[FR Doc. 2020-19432 Filed 9-29-20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084-AB63

Duties of Furnishers of Information to Consumer Reporting Agencies Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) requests public comment on its Duties of Furnishers of Information to Consumer Reporting Agencies Rule (“Furnisher Rule”) as part of the FTC’s systematic review of all current Commission regulations and guides. In addition, the FTC is proposing to amend the Rule to correspond to changes made to the Fair Credit Reporting Act (“FCRA”) by the Dodd-Frank Act.

DATES: Written comments must be received on or before December 14, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Furnisher Rule, 16 CFR part 660, Project No. P205408” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202-326-2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Furnisher Rule

The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) was signed into law on December 4, 2003. Public Law 108-159, 117 Stat. 1952. Section 312 of the FACT Act amended section 623¹ of the FCRA by requiring the FTC, with other agencies, to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies (“CRAs”) and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also required the Commission and the other agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate direct consumer disputes concerning the accuracy of information provided by the furnisher to a CRA. On July 1, 2009, the Commission issued the Furnisher Rule and the accompanying guidelines that became effective July 1, 2010.²

The Rule requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a CRA.³ The Rule also requires that furnishers respond to direct disputes from consumers.⁴

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law in 2010.⁵ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) the Commission’s rulemaking authority under portions of the FCRA.⁶ Accordingly, in 2012, the Commission rescinded several of its FCRA rules that had been replaced by rules issued by the CFPB.⁷ The FTC retained rulemaking authority for other rules to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the

¹ 15 U.S.C. 1681s-2.

² 74 FR 31484.

³ 16 CFR 660.3.

⁴ 16 CFR 660.4.

⁵ Public Law 111-203 (2010).

⁶ 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (“Red Flag Guidelines and Regulations Required”) and section 628 of the FCRA (“Disposal of Records”). See 15 U.S.C. 1681s(e).

⁷ 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.

Dodd-Frank Act⁸ that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (“motor vehicle dealers”).⁹ The retained rules include the Furnisher Rule, which now applies only to motor vehicle dealers.¹⁰ Furnishers that were originally covered by the Furnisher Rule that are not motor vehicle dealers are covered by the CFPB’s rule.¹¹

II. Technical Changes To Correspond to Statutory Changes Resulting From the Dodd-Frank Act

The Commission adopted the Furnisher Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission’s enforcement authority for the Furnisher Rule, it did narrow the Commission’s rulemaking authority with respect to the Rule. It now covers only motor vehicle dealers.¹² The amendments in the Dodd-Frank Act necessitate technical revisions to the Furnisher Rule to ensure that the regulation is consistent with the text of the amended FCRA. Accordingly, the Commission proposes to modify the Furnisher Rule to reflect the Rule’s scope.

The proposed amendment to § 660.1 narrows the scope of the Furnisher Rule to those entities set forth in the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party.¹³ It does so by limiting the furnishers to which it applies from all furnishers within the FTC’s enforcement authority to “motor vehicle dealers,” as defined in amended § 660.2. The amendments make no other substantive changes to the Rule.

The proposed amendment to § 660.2 adds a definition of “motor vehicle dealer” that defines motor vehicle dealers as those entities excluded from Consumer Financial Protection Bureau jurisdiction as described in the Dodd-Frank Act.¹⁴ The proposed amendment also changes the definition of “identity theft” by replacing the Rule’s reference to 16 CFR 603.2(a), which is an FTC rule that has been rescinded,¹⁵ with a

reference to 12 CFR 1022.3(h), the equivalent provision in the CFPB’s rule.

III. Regulatory Review of the Furnisher Rule

In addition to proposing the changes described above, the Commission seeks information about costs and benefits of the Rule, and its regulatory and economic impact. It has been ten years since the Rule was enacted. Consistent with its practice of reviewing all of its rules and guides periodically, the Commission seeks to ascertain whether changes in technology, business models, or the law warrant modification or rescission of the Rule. As part of this review the Commission solicits comments on, among other things, the economic impact and benefits of the Furnisher Rule; possible conflict between the Furnisher Rule and state, local, or other federal laws or regulations; and the effect on the Furnisher Rule of any technological, economic, or other industry changes.

IV. Issues for Comment

The Commission requests written comment on any or all of the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues about which public comments may be submitted. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and refer to empirical data or other evidence upon which the comment is based whenever available and appropriate.

1. Is there a continuing need for specific provisions of the Furnisher Rule? Why or why not?

2. What benefits has the Furnisher Rule provided to consumers? What evidence supports the asserted benefits?

3. What modifications, if any, should be made to the Furnisher Rule to increase the benefits to consumers?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the costs imposed by the Furnisher Rule?

4. What significant costs, if any, has the Furnisher Rule imposed on consumers? What evidence supports the asserted costs?

5. What modifications, if any, should be made to the Furnisher Rule to reduce any costs imposed on consumers?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Furnisher Rule?

6. What benefits, if any, has the Furnisher Rule provided to businesses, including small businesses? What evidence supports the asserted benefits?

7. What modifications, if any, should be made to the Furnisher Rule to increase its benefits to businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the costs the Furnisher imposes on businesses, including small businesses?

c. How would these modifications affect the benefits to consumers?

8. What significant costs, if any, including costs of compliance, has the Furnisher Rule imposed on businesses, including small businesses? What evidence supports the asserted costs?

9. What modifications, if any, should be made to the Furnisher Rule to reduce the costs imposed on businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Furnisher Rule?

10. What evidence is available concerning the degree of industry compliance with the Furnisher Rule?

11. What modification, if any, should be made to the Furnisher Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

12. Does the Furnisher Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

a. What evidence supports the asserted conflicts?

b. With reference to the asserted conflicts, should the Furnisher Rule be modified? If so, why, and how? If not, why not?

13. The Commission proposes to amend the Rule to reflect that the Commission’s rulemaking authority has been revised by statute to apply exclusively to motor vehicle dealers. Are the proposed modifications appropriate? Should additional amendments be made? Would these amendments create conflicts with any other federal, state, or local regulations or laws?

14. In 2018, the FCRA was amended to require CRAs to allow consumers to freeze their consumer reports, which restricts access to the reports in order to reduce the risk of identity theft, free of charge. Should § 660.4 be amended to exclude credit freezes from the mandatory investigation requirements of the Furnisher Rule, in the same manner

⁸ 15 U.S.C. 5519.

⁹ 77 FR 22200 (April 13, 2012).

¹⁰ *Id.*

¹¹ 12 CFR 1022.40–43.

¹² 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

¹³ 12 U.S.C. 5519.

¹⁴ *Id.*

¹⁵ 77 FR 22200 (April 13, 2012).

as fraud alerts and active duty alerts under the current rule?

15. The Furnisher Rule is intentionally flexible, referring only to reasonable procedures, because it applies to many different types of entities. In light of the narrowing of the Rule's scope to only motor vehicle dealers, should the Rule be amended to include requirements that are specifically tailored to motor vehicle dealers? For example, should the Rule include provisions that require motor vehicle dealers to furnish specific pieces of information concerning an automobile loan to CRAs? If so, what provisions should be amended or added to more directly address motor vehicle dealers?

V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 14, 2020. Write "Furnisher Rule, 16 CFR part 660, Project No. P205408" on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To make sure that the Commission considers your online comment, follow the instructions on the web-based form.

If you file your comment on paper, write "Furnisher Rule, 16 CFR part 660, Project No. P205408" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number, date of

birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential," as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on <https://www.regulations.gov>, we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission website at <https://www.ftc.gov> to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 14, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or

Commissioner's advisor, will be placed on the public record.¹⁶

VII. Paperwork Reduction Act

The Furnisher Rule contains information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget ("OMB") regulations that implement the Paperwork Reduction Act ("PRA"). 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through July 31, 2022 (OMB Control No. 3084-0144). Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and then shares equally the remaining estimated PRA burden with the CFPB for other persons for which both agencies have enforcement authority regarding the Furnisher Rule. This proposal would amend 16 CFR part 660.

The proposed amendments do not modify or add to information collection requirements previously approved by OMB. The amendments narrow the scope to motor vehicle dealers. The Rule's OMB clearance already reflects that change in scope. Therefore, the Commission does not believe the proposed amendments would modify substantially or materially any "collections of information" as defined by the PRA.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.¹⁷ The Commission does not expect that the proposed changes to this Rule, if adopted, would have the threshold impact on small entities. The Commission does not expect the proposal to impose costs on small motor vehicle dealers because the amendments are primarily for clarification purposes and should not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action if the proposal is adopted.

Therefore, based on available information, the Commission certifies that amending the Furnisher Rule as proposed will not have a significant

¹⁶ 16 CFR 1.26(b)(5).

¹⁷ 5 U.S.C. 603-605.

economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA that the proposed amendment would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons for the Proposed Rule

To address the Dodd-Frank Act's changes to the Commission's rulemaking authority, the Commission proposes to clarify that the Rule applies only to motor vehicle dealers.

B. Statement of the Objectives, and Legal Basis For, the Proposed Rule

The objectives of the proposed Rule are discussed above. The legal basis for the proposed Rule is 15 U.S.C. 1681s-2(e).

C. Description of Small Entities to Which the Proposed Rule Will Apply

Determining a precise estimate of the number of small entities¹⁸ is not readily feasible. Financial institutions covered by the Rule include certain motor vehicle dealers. A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendment will not have a significant impact on small businesses because it imposes no new obligations.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities

The proposed amendments would impose no new reporting, recordkeeping, or other compliance requirements. The small entities

¹⁸ The U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS) are generally expressed in either millions of dollars or number of employees. A size standard is the largest that a business can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the annual receipts or the average employment of a firm. New car dealers (NAICS code 441100) are classified as small if they have fewer than 200 employees. Used car dealers (NAICS code 441120) are classified as small if their annual receipts are \$27 million or less. Recreational vehicle dealers, boat dealers, motorcycle, ATV and all other motor vehicle dealers (NAICS codes 441210, 441222 and 441228) are classified as small if their annual receipts are \$35 million or less. The 2019 Table of Small Business Size Standards is available at <https://www.sba.gov/document/support-table-size-standards>.

potentially covered by the proposed amendment will include all such entities subject to the Rules.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendment. Nonetheless, the Commission is requesting comment on the extent to which other federal standards involving consumer reports may duplicate, satisfy, or possibly conflict with the Rule's requirements for any covered financial institutions.

F. Significant Alternatives to the Proposed Rule

The Commission has not proposed any specific small entity exemption or other significant alternatives because the proposed amendment would not impose any new requirements or compliance costs. Nonetheless, the Commission welcomes comment on any significant alternative consistent with the FCRA that would minimize the impact of the proposed Rule on small entities.

IX. Proposed Rule Language

List of Subjects in 16 CFR Part 660

Consumer protection, Credit, Trade practices.

For the reasons stated above, the Federal Trade Commission proposes to amend part 660 of title 16 of the Code of Federal Regulations as follows:

- 1. Revise the authority citation for part 660 to read as follows:

Authority: 15 U.S.C. 1681s-2; 12 U.S.C. 5519(d); Sec. 311, Pub. L. 108-159.

- 2. Revise § 660.1 to read as follows:

§ 660.1 Scope.

This part applies to furnishers of information to consumer reporting agencies that are motor vehicle dealers as defined by § 660.2 (referred to as "furnishers").

- 3. Amend § 660.2 by revising paragraph (d) and adding paragraph (f) to read as follows:

§ 660.2 Definitions.

* * * * *

(d) *Identity theft* has the same meaning as in 12 CFR 1022.3(h)

* * * * *

(f) *Motor vehicle dealer* means any person excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

By direction of the Commission, Commissioner Slaughter and Commissioner Wilson not participating.

April J. Tabor,
Acting Secretary.

[FR Doc. 2020-19523 Filed 9-29-20; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1309, and 1316

[Docket No. DEA-438]

RIN 1117-AB36

Default Provisions for Hearing Proceedings Relating to the Revocation, Suspension, or Denial of a DEA Registration

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would add provisions requiring a person served with an order to show cause issued pursuant to the Controlled Substances Act to file a request for a hearing no later than 15 days after the date of receipt of the order. The proposed rulemaking would also add provisions requiring that a person who requests a hearing file an answer to the order to show cause no later than 30 days after the date of receipt of the order; it also sets forth criteria for what the answer must contain. The proposed rule would add provisions allowing the entry of a default where a party served with an order to show cause fails to request a hearing, fails to file an answer to the order to show cause, or otherwise fails to defend against the order to show cause. The proposed rule provides that where a party defaults, the factual allegations of the order to show cause would be deemed admitted. The proposed rule would also provide for the dismissal of an order to show cause where the Administration fails to prosecute the proceeding. This proposed rule would also provide that a default may only be excused upon a party establishing good cause to excuse its default and sets forth the procedures a party must follow to seek such relief. Further, the proposed rule would remove the current provisions allowing a recipient of an order to show cause to file a written statement while waiving his/her/its right to an administrative hearing.

DATES: Electronic comments must be submitted, and written comments must

be postmarked, on or before November 30, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. DEA-438” on all correspondence, including any attachments.

Electronic Comments: The Drug Enforcement Administration encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

Paper Comments: Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362-3261.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received, including attachments and other supporting materials, are considered part of the public record. They will be made available by the Drug Enforcement Administration (DEA) for public inspection online at <https://www.regulations.gov>. The Freedom of Information Act applies to all comments received. Confidential information or personal identifying information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

Comments with confidential information, which should not be made available for public inspection, should be submitted as written/paper submissions. Two written/paper copies should be submitted. One copy will include the confidential information with a heading or cover sheet that states “CONTAINS CONFIDENTIAL INFORMATION.” DEA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy should have the claimed confidential information redacted/blacked out. DEA will make this copy available for public inspection online at <https://www.regulations.gov>. Other information, such as name and contact information, that should not be made available, may be included on the cover sheet but not in the body of the comment, and must be clearly identified as “confidential.” Any information clearly identified as “confidential” will not be disclosed.

An electronic copy of this document is available at <https://www.regulations.gov>.

Statutory and Regulatory Background of Administrative Hearing Regulations

DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended, and referred to as the Controlled Substances Act (CSA or the Act).¹ The CSA is designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety. To this end, controlled substances are classified into one of five schedules based upon: The potential for abuse, currently accepted medical use, and the degree of dependence if abused. 21 U.S.C. 812. Listed chemicals are separately classified based on their use in and importance to the manufacture of controlled substances (List I or List II chemicals). 21 U.S.C. 802(33)-(35).

The CSA establishes a closed system of distribution that requires DEA to monitor and control the manufacture, distribution, dispensing, import, and export of controlled substances until

they reach their final lawful destination. In order to maintain this closed system of distribution, persons that manufacture, distribute, dispense, import, export, or conduct research or chemical analysis with controlled substances are required to register with DEA at each principal place of business or professional practice. Persons registered with DEA are permitted to possess controlled substances as authorized by their registration and must comply with the applicable requirements associated with their registration. 21 U.S.C. 822. The CSA also establishes a system to monitor and control the manufacture, distribution, import, and export of listed chemicals and requires that persons who seek to engage in these activities obtain a registration authorizing them to do so from DEA.

In carrying out its functions under the Act, DEA “may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.” 21 U.S.C. 875(a). *See also* 21 U.S.C. 965. The Act requires that, except as otherwise provided, hearings involving the proposed denial of an application for a registration or the proposed suspension or revocation of a registration² are to be conducted “in accordance with subchapter II of chapter 5 of Title 5,” which sets forth the procedures for adversary adjudications under the Administrative Procedure Act (APA).³ 21 U.S.C. 824(c)(4).

In accordance with the Attorney General’s authority to “promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions” under the Act, 21 U.S.C. 871(b), DEA’s predecessor agency, the Department of Justice’s Bureau of Narcotics and Dangerous Drugs, first issued regulations in 1971 to implement the Comprehensive Drug Abuse Prevention and Control Act of 1970. *See* 36 FR 7776

² Before taking any action to deny, revoke, or suspend a registration to manufacture, distribute, dispense, import, or export a controlled substance or a registration to manufacture, distribute, import or export a list I chemical, DEA must serve upon the applicant or registrant an order to show (OSC) cause why the registration should not be denied, revoked, or suspended. *See* 21 U.S.C. 824(c) and 958(d)(4). The OSC cause must “contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before [DEA] at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order.” *Id.* Proceedings for the denial, revocation, or suspension of a registration are to be conducted in accordance with the Administrative Procedure Act. *See id.*

³ *See* 5 U.S.C. 556 and 557.

¹ The Attorney General’s delegation of authority to DEA may be found at 28 CFR 0.100.

(Apr. 24, 1971). With a few exceptions, the administrative hearing provisions of those 1971 regulations are virtually identical to the ones in place today.

The general administrative hearing provisions which apply to all hearings brought pursuant to 21 U.S.C. 823, 824 and 958 are found at 21 CFR part 1316, subpart D. Specific administrative hearing provisions relating to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances are in 21 CFR 1301.32, 34 through 37, and 41 through 46, as well as 21 CFR 1316.41 through 68. Administrative hearing provisions relating to the registration of manufacturers, distributors, importers, and exporters of list I chemicals are in 21 CFR 1309.42, 43, 46, 51 through 55, and 21 CFR 1316.41 through 68.

The changes proposed in this action would apply only to hearings relating to the denial, revocation, or suspension of a DEA registration pursuant to 21 U.S.C. 823, 824, and 958. This proposed rulemaking does not contemplate changes for any other types of hearings that DEA may conduct, including hearings relating to quota issuance, revision, or denial, or those relating to the scheduling of controlled substances.

Need for Change and Overview of the Proposed Amendments

Current DEA hearing regulations in 21 CFR parts 1301 and 1309 relating to actions to deny, suspend, or revoke a DEA registration contain neither a rule requiring a responsive pleading to an OSC nor a default provision, in contrast to the hearing regulations of many other Federal agencies. Provisions requiring a responsive pleading to a complaint and authorizing the entry of a default are an accepted part of civil and administrative practice. *See, e.g.*, 16 CFR 3.12 (Federal Trade Commission rule regarding answer and default); 40 CFR 22.15, 22.17 (Environmental Protection Agency rules regarding answer and default); 12 CFR 1081.201 (Consumer Financial Protection Bureau rule regarding answer and default); Fed. R. Civ. P. 8(b) and 55. Because of the absence of such provisions, DEA must expend significant resources to adjudicate registration matters even where the applicant or registrant has effectively opted not to litigate. This scenario occurs in a significant number of DEA administrative actions, and the addition of these provisions would conserve scarce agency resources⁴ and greatly

increase the efficiency of the adjudicatory process. Requiring the applicant/registrant to file an answer would improve efficiency even in cases where an applicant/registrant requests a hearing, by narrowing the scope of the hearing to those issues about which there is a legitimate disagreement between the parties.

DEA proposes to add provisions to §§ 1301.37 and 1309.46 requiring applicants/registrants served with an OSC that request a hearing to file an answer responding to each of the allegations contained in the OSC, and to amend § 1316.47 accordingly. DEA also proposes to amend §§ 1301.43(c) and (d), and 1309.53(b) and (c) by adding provisions allowing for entry of a default in various circumstances.

The addition of §§ 1301.37(d) and 1309.46(d) and the proposed changes to § 1316.47 would require an applicant/registrant who requests a hearing to file an answer within 30 days of the date of receipt of the OSC. The deadline to file a request for a hearing would be shortened to 15 days to expedite the hearing process, but the request form would be amended to only require the hearing request itself, and not a substantive response to the OSC. The substantive response material would still be included in the answer, but would retain the same 30-day deadline provided by the current regulations governing time allowed for filing a response to an OSC under §§ 1301.43(a), 1309.53(a), and 1316.47. These staggered deadlines help keep the administrative process on track by compelling the recipient of an OSC to signal their intention to engage the DEA administrative process within 15 days of being served. Without this sort of a staggered deadline, requests to extend the 30-day deadline to file an answer are likely to arrive on, or after the deadline, and if the request for extension is granted, the administrative litigation process will be delayed for an additional 30 to 60 days. The staggered deadlines are not expected to preclude the filing of all extension requests; however, staggering deadlines will help decrease the number of such filings and ensure they are filed earlier in the process. This proposed rule would signal to DEA whether an applicant/registrant intends to contest an OSC, without reducing the amount of time the applicant/registrant has to prepare a substantive response to the OSC. This earlier knowledge (at the 15-day mark) would allow DEA to prioritize its resources on those matters that will

proceed to an administrative hearing, and to prepare for the hearings that are most likely to occur.

Staggered deadlines would place only a marginal burden on recipients of OSC. As noted, a recipient need only send an email to the address provided in the OSC stating “I request a hearing” within 15 days of being served with an OSC. DEA believes that these staggered deadlines are appropriate given the relative lack of effort and complexity of a hearing request affirming that the applicant/registrant intends to engage the administrative process in response to the OSC. Filing an answer would likely require more time and effort. Accordingly, DEA believes that requiring the filing of an answer in 30 days—which is more generous than deadlines set by the Federal Rules of Civil Procedure for analogous parties—is appropriate. *See Fed. R. Civ. P. 12(a)(A)(i)* (21 day deadline for filing answer).

For each factual allegation in the OSC, the answer must specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny the allegation. The proposed rule provides that a party may amend its answer one time prior to the presiding officer’s issuance of the prehearing ruling, after which a party may amend its answer only with leave of the presiding officers. These rules would also require an applicant/registrant to serve a copy of its request for a hearing and its answer on the Administration at the address listed in the OSC, in addition to filing these documents with the Office of the Administrative Law Judges (ALJ).

Under the proposed new language in §§ 1301.43(c)(1) and 1309.53(b)(1), a person who fails to timely request a hearing after properly being served with an OSC pursuant to § 1301.37 or 1309.46 would be deemed to have waived his/her/its right to a hearing and to be in default. The proposed new language of §§ 1301.43(c)(1) and 1309.53(b)(1) provides that a person who fails to timely request a hearing may seek to be excused from the default by filing a motion with the Office of ALJ establishing good cause to excuse the default no later than 45 days after the date on which the person received the OSC. Thereafter, any person who has failed to timely request a hearing and seeks to be excused from a default must file a motion with the Office of the Administrator, which shall have exclusive jurisdiction to rule on the motion.

Similarly, the proposed new language in §§ 1301.43(c)(2) and 1309.53(b)(2) provides that any person who has

⁴ It is important to note that the administrative hearings that are the subject of this proposed rulemaking involve fee-paying DEA applicants and registrants. DEA believes that this proposed

rulemaking will speed the disposition of cases, and enhance the protection of the public interest.

requested a hearing but fails to timely file an answer, or fails to demonstrate good cause (via a motion for relief) for failing to timely file an answer, will be deemed to have waived his/her/its right to a hearing and to be in default. The proposed new language also provides that, upon motion of the Administration in such circumstances, the presiding officer shall then enter an order terminating the proceeding. However, under § 1316.47(b), the presiding officer, upon request and a showing of good cause (e.g., an unexpected medical emergency, death in the family, excusable neglect), may grant a reasonable extension of the time allowed for filing the answer. *See e.g., Rene Casanova, M.D.*, 77 FR 58,150, 58, 150 n.2 (2012) (collecting cases applying “good cause” standard in context of request for extensions). As with any motion for relief from a deadline, a respondent could seek an extension of time prior to the deadline in question, and the non-moving party would have the opportunity to respond.

The proposed language in §§ 1301.43(c)(3) and 1309.53(b)(3) provides that if the Administration fails to prosecute, or a person who has requested a hearing fails to plead or otherwise defend, that party shall be deemed in default, and the opposing party may move to terminate the proceeding. The proposed rule further provides that upon such motion, the presiding officer shall then enter an order terminating the proceeding absent a showing of good cause by the party deemed to be in default. Upon termination of the proceeding by the presiding officer, a party may seek relief only by filing a motion establishing good cause to excuse its default with the Office of the Administrator. This rule is being proposed because on occasion, applicants/registrants have filed a timely hearing request but, for whatever reason, subsequently failed to participate further in the proceeding, repeatedly failed to adhere to the orders of the presiding officer, or otherwise defend the allegations in the OSC. This means that even if a party who timely filed an answer could subsequently be held in default if it essentially stopped participating in the litigation process, or if its conduct was sufficiently contumacious of the tribunal such that default was an appropriate sanction. This rule, which mirrors the authority trial judges have under the Federal Rules of Civil Procedure to dismiss cases for significant failures to defend or the failure of a party to prosecute a case, *see Fed. R. Civ. P. 41(b)*, 55, would authorize the presiding officer to issue

an order terminating the proceeding in such cases.

The proposed new language for §§ 1301.43(e) and 1309.53(d) provides that a default shall be deemed to constitute a waiver of the applicant’s/registrant’s right to a hearing and an admission of the factual allegations of the OSC.

The proposed new language in §§ 1301.43(f)(1) and 1309.53(e)(1) sets forth the procedures to be followed where a party is deemed to be in default. With respect to an applicant/registrant who is deemed to be in default based on the failure to file a timely hearing request, or where the applicant/registrant is deemed to be in default for failure to file an answer or otherwise defend and the presiding officer has issued an order terminating the proceeding, the proposed rule provides that the Administration may then file a request for final agency action along with a record to support its request with the Administrator who may enter a default pursuant to § 1316.67. This record should include, for instance, documents demonstrating adequate service of process and, where a party held to be in default asserted that the default should be excused, any pleadings filed by both the parties addressing this issue.

In contrast, under the current rules, in cases where the applicant/registrant waives his/her/its right to a hearing, DEA counsel must provide the Administrator with a much more voluminous record, including evidence to support each factual allegation which the Administration seeks to establish. This may include recordings and transcripts of undercover visits, medical records, invoices and dispensing records, and expert reports. Because DEA’s current rules do not provide that an applicant’s/registrant’s waiver of his/her/its right to a hearing constitutes an admission of the factual allegations of the OSC, both the preparation of the record by DEA counsel for submission to the Administrator and the process of reviewing the record and drafting the Administrator’s final order require a significant investment of agency resources. The changes proposed here would thus save these resources, which can then be devoted to other pending matters and reduce the time it takes for the Administrator’s final order to issue in those cases where applicants/registrants choose not to challenge the proceeding or fail to properly participate in the proceeding.

The proposed rule provides that in the event the Administration is deemed to be in default pursuant to § 1301.43(f)(2) or 1309.53(e)(2), the

presiding officer shall transmit the record to the Administrator for his consideration no later than five (5) business days after the date of issuance of the order. The proposed rule also provides that upon termination of the proceeding by the presiding officer, the Administration may seek relief only by filing a motion establishing good cause to excuse its default with the Office of the Administrator.

The proposed new language in §§ 1301.43(f)(3) and 1309.53(e)(3) provides that a party held to be in default may move to set aside an entry of default final order issued by the Administrator by filing a motion no later than 30 days from the date of issuance by the Administrator of an entry of default. However, any such motion shall be granted only upon a showing of good cause to excuse the default.

Under the proposed amendments to §§ 1301.43(e)(1) and 1309.53(d)(1), the Administrator would be authorized to issue a final order on the basis of a default, but would have the discretion not to take such action. For example, the Administrator might conclude that the factual allegations of the OSC, even deeming them admitted, do not establish violations of the CSA or other conduct which is inconsistent with the public interest. The Administrator may also conclude that any violations or misconduct proved by the admissions nonetheless do not warrant the sanction proposed by the Administration. In such instance, the Administrator would retain the discretion to dismiss the OSC, or issue an appropriate order imposing whatever sanction is warranted by the admitted allegations.

DEA also proposes to remove the provisions in §§ 1301.43(c) and 1309.53(b) that allow for the submission of a written statement in lieu of a hearing. For adjudications relating to registrations and applications, these provisions have proven to be unworkable in practice because these proceedings typically involve the need to resolve disputed historical facts and to make credibility determinations. Either party would, however, retain the ability (as exists currently) to seek summary disposition on any allegation for which no material facts were in dispute. The current provisions of §§ 1301.43(c) and 1309.53(b) are ambiguous and do not necessarily even allow for, or require the submission of, additional evidence supporting a position statement. Given that the Administration provides an opportunity for a full and fair hearing to any person issued an OSC in accordance with the Due Process Clause and the

Administrative Procedure Act, the current provision allowing the submission of unsworn written statements does not enhance the reliability of the Administration's adjudications. Accordingly, DEA is proposing to remove this procedural option, which historically has been invoked by respondents only sparingly.

DEA is also proposing to remove the opportunity of third parties who are entitled to participate in a hearing under § 1301.43(c) to submit a written position statement in lieu of participating in the hearing. In DEA's experience, no party has ever requested this opportunity, and any such party retains the opportunity to participate in the hearing if the applicant/registrant avails itself of its right to a hearing.

Regulatory Analyses

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

This proposed rule was developed in accordance with the principles of Executive Orders 12866, 13563, and 13771. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. DEA has determined that this proposed rule is not a "significant

regulatory action" under Executive Order 12866, section 3(f).

DEA estimates that there are both costs and cost savings associated with the proposed rule. The provisions of this proposed rule apply only to the small minority of applicants and registrants who are issued an OSC. Therefore, a very small minority of registrants would potentially be economically impacted if this rule were promulgated. From 2016 to 2018, there were on average 81 OSCs issued annually. These 81 OSCs fall into one of three categories: (1) An average of 29 cases in which the registrant/applicant surrendered and/or withdrew his/her/its application, thus mooted the case, (2) an average of 11 cases in which the registrant/applicant properly requested a hearing, and (3) the remaining 41 registrants per year who failed to timely file a request for a hearing and were deemed to have waived their right to a hearing and who would be in default under the proposed rule. The 11 registrants per year who properly requested a hearing are estimated to incur costs while the registrants in the remaining two categories do not.

The proposed rule requires that an applicant/registrant must file an answer responding to every allegation in the OSC. The average of 29 cases in which the registrant/applicant surrenders or withdraws his/her/its application, thus mooted the case, would not result in the registrant/applicant filing an answer to the OSC. Therefore, these registrants/applicants would not incur any costs. The average of 11 cases per year where an applicant requests a hearing may incur a cost associated with answering the factual allegation(s) of the OSC. To estimate the cost of this proposed change, DEA estimates that, on average, it will take five hours for a registrant's attorney to review the OSC and prepare an answer to all allegations. The total estimated cost of this proposed change is \$36,190 per year.⁵

The remaining 41 cases, where there was neither a registration surrendered nor a hearing conducted, would be differently impacted by this proposed rule. The proposed rule provides that where a party defaults, the factual allegations of the OSC are deemed admitted. For these 41 cases, where there was registrant inaction, the registrant's cost of inaction is the same

under current or proposed rules. There is no additional cost to registrants. This proposed rule would also provide that a default may only be set aside upon a party establishing good cause to excuse its default. DEA has no basis to estimate the number of affected parties who will seek to establish good cause to set aside a default and any costs associated with such activities.

However, under *Kamir Garces Mejias*, 72 FR 54931 (2007), a party seeking to be excused from an ALJ order terminating a proceeding for failing to comply with the ALJ's orders is required to show good cause to excuse its default. Thus, because this proposed requirement of the rule simply codifies case law, it imposes no additional cost to registrants.

Finally, this proposed rule would also result in cost savings for DEA by streamlining the Administrator's review process using the default determination. The proposed rule provides that when an applicant/registrant is deemed to be in default, the Administration may then file a request for final agency action along with a record to support its request with the Administrator who may enter a default. This record should include, for instance, documents demonstrating adequate service of process and, where a party held to be in default asserted that the default should be excused, any pleadings filed by both the parties addressing this issue. In contrast, under the current rules, in cases where the applicant/registrant waives his/her/its right to a hearing, DEA counsel must provide the Administrator with a much more voluminous record, including evidence to support each factual allegation which the Administration seeks to establish. Because DEA's current rules do not provide that an applicant's/registrant's waiver of his/her/its right to a hearing constitutes an admission of the factual allegations of the OSC, both the preparation of the record by DEA counsel for submission to the Administrator and the process of reviewing the record and drafting the Administrator's final order require a significant investment of agency resources. The changes proposed here would thus save these resources, which can then be devoted to other pending matters and reduce the time it takes for the Administrator's final order to issue in those cases where applicants/registrants choose not to challenge the proceeding or fail to properly participate in the proceeding.

To estimate the cost savings of this rule, DEA first estimates the amount of time and resources that would be saved for cases that would be resolved via

⁵ Hourly rate using Laffey Matrix for lawyers with 8–10 years of experience from 6/1/18 to 5/31/19 is \$658 per hour. Total Cost = (\$658 × 5 × 11). While it is possible the fees incurred for legal review and to answer the allegations would be offset by a reduction in fees later in the process. This is a new requirement and DEA conservatively estimates this requirement as a new cost.

entry of a default. The complexity of a given case would impact both how much time it would take to prepare the request for final agency action (FAA) and for the Administrator's Office to draft the final order based on that FAA request, which cumulatively would represent the amount of resources saved in a given case. For a case based solely on allegations related to a lack of state authority, or an exclusion from federal health care programs, the gathering of the evidence, including declarations, and preparation of the FAA motion take, on average, approximately 10–15 hours. For cases with allegations (most commonly, improper prescribing or filling of prescriptions), the preparation of the FAA materials is considerably longer—approximately 30–40 hours per case. It is estimated that of the cases in which there was neither a hearing request nor a registration surrender, roughly 30–40% are No State License (NSL) cases and 60–70% of cases would be considered other non-NSL cases. For the purpose of this analysis, DEA estimates that of the 41 cases this rule would impact on average each year, 65% would be considered non-NSL cases and take 35 hours to prepare a FAA for, while 35% would be considered NSL cases and take 13 hours to prepare a FAA for. Applying the loaded wage⁶ for GS–15 Step 5 employees,⁷ DEA estimates the cost savings of this rule for the time it would take to prepare the FAA request is around \$134,065 per year.⁸

Additionally, there are cost savings from the time it would take the Administrator's Office to draft the final order based on that FAA request. The cost savings for the Administrator's review process would be the most significant for all substantive cases that would be subject to the rule. The

Administrator's review process consists of the time to review the FAA request, evaluate the evidence submitted by DEA counsel, draft a decision, and the time the Administrator must spend reviewing the proposed decision. On average, there are four substantive cases per year that would be subject to the rule. Currently, the estimated time it takes for the substantive cases is 30 days or 240 hours. With the rule promulgated, the estimated time it will take for these substantive cases will be between one day and two weeks depending on the complexity of the case. For the purpose of this analysis, DEA estimates it will take seven days or 56 hours with the rule promulgated. Using the loaded hourly wage of a GS–15 Step 5 employee, the estimated cost savings for substantive cases is \$88,155 per year.⁹ There is also cost savings for non-substantive cases, but DEA believes this cost savings to be minimal for the Administrator's review process. Also, while there is a difference in the legal definition of “deemed to have waived” versus “deemed to be in default,” there is no enhancement of potential sanctions. The Administrator will continue to issue the final order based on the same set of circumstances regarding the OSC and the default determination, versus the current “deemed to have waived” determination with the additional voluminous record provided. Therefore, the cost savings due to the Administrator's review process is estimated to be around \$88,155 per year.

In summary, there are both costs and cost savings associated with this proposed rule. DEA has no basis to estimate the additional litigation costs for registrants who are “deemed to be in default” as a result of the proposed rule as compared to registrants who are “deemed to have waived” under the existing regulations, but believes this additional litigation cost to be minimal due to the small number of these cases occurring each year. The total cost to registrants due to the requirement that an applicant/registrant must file an answer to an OSC is \$36,190 per year. This proposed rule has an estimated cost savings of \$222,220 (\$134,065 + \$88,155) per year for DEA by streamlining the Administrator's review process using the default determination. The estimated net cost savings of this rule is \$186,030 (\$222,220 – \$36,190) per year.

Therefore, DEA does not anticipate that this rulemaking will 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.

This proposed rule has been characterized as “Other” for purposes of E.O. 13771 because costs of this proposed rule have not finally been determined.

Executive Order 12988, Civil Justice Reform

The proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–12) (RFA), has reviewed this rule and by approving it certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

In accordance with the RFA, DEA evaluated the impact of this rule on small entities. The proposed rule would add provisions allowing the entry of a default where a party served with an OSC fails to request a hearing, fails to file an answer to the OSC, or otherwise fails to defend against the OSC. *Cf.* Fed. R. Civ. P. 55(a). The proposed rule provides that where a party defaults, the factual allegations of the OSC are deemed admitted. Further, the proposed rule would remove the current provisions allowing a recipient of an OSC to file a written statement while waiving his/her/its right to an

⁶ The loaded wage includes the average benefits for employees in the government. Therefore, the loaded wage is the estimated cost of employment to the employer rather than the compensation to the employee.

⁷ Hourly rate for GS–15 Step 5 employees in the Washington, DC region is \$74.86. 2019 General Schedule Locality Pay Tables for the Washington-Baltimore-Arlington area, Office of Personnel Management, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf. Average benefits for state government employees is 37.5% of total compensation. Employer Costs for Employee Compensation—December 2018, Bureau of Labor Statistics, https://www.bls.gov/news.release/archives/ecec_03192019.pdf. The 37.5% of total compensation equates to 60% (37.5%/62.5%) load on wages and salaries. The loaded hourly rate is \$119.78 (\$74.86 × 1.6). The ECEC does not provide figures for Federal Government employees; therefore, figures for state employees are used as estimate.

⁸ (\$119.78 × 41 × 65% × 35) + (\$119.78 × 41 × 35% × 13).

⁹ (4 × 240 × \$119.78) – (4 × 56 × \$119.78) = \$88,155.

administrative hearing. As all DEA registrants would be subject to the amended administrative enforcement procedures described in the notice of proposed rulemaking, the proposed rule could potentially affect any person holding or planning to hold a DEA registration to handle controlled substances and those manufactures, distributors, importers, and exporters of list I chemicals. As of March 2019, there were approximately 1.8 million DEA registrations for controlled substances and list I chemicals. Registrants include individual practitioners (such as physicians, dentists, mid-level practitioners, etc.), business entities (such as offices of physicians, pharmacies, hospitals, pharmaceutical manufacturers, distributors, importers, exporters, etc.), and governmental or tribal agencies that handle controlled substances or list I chemicals.

In practice, a very small minority of DEA registrants are served with OSCs in connection with the denial or cancellation of registration, and thus a very small minority of DEA registrants would be impacted by the proposed rule. Over the three-year period 2016–2018, there was an average of 81 OSCs served per year. These 81 OSCs fall into one of three categories: (1) An average of 29 cases in which the registrant/applicant surrendered the registration and/or withdrew his/her/its application, thus mooted the case, (2) an average of 11 cases in which the registrant/applicant properly requested a hearing, and (3) the remaining 41 registrants per year who failed to timely file a request for a hearing and were deemed to have waived their right to a hearing (and would be in default under the proposed rule). The 11 registrants per year who properly requested a hearing are estimated to incur costs while the registrants in the remaining two categories do not.

The proposed rule requires that an applicant/registrant must file an answer responding to every allegation in the OSC. The average of 29 cases in which the registrant/applicant surrenders or withdraws his/her/its application, thus mooted the case, would not result in the registrant/applicant filing an answer to the allegations in the OSC. Therefore,

these registrants/applicants would not incur any costs. The average of 11 cases per year where a registrant/applicant requests a hearing may incur a cost associated with answering the allegation(s) of the OSC. To estimate the cost of this proposed change, DEA estimates that, on average, it will take five hours for a registrant/applicant's attorney to review the OSC and prepare an answer to all allegations, or an average of \$3,290 per registrant.¹⁰

The remaining 41 cases, where there was neither a registration surrendered nor a hearing conducted, would be differently impacted by this proposed rule. The proposed rule provides that where a party defaults, the factual allegations of the OSC are deemed admitted. This proposed rule would also provide that a default may only be set aside upon a party establishing good cause to excuse its default. DEA has no basis to estimate the number of affected parties who will seek to establish good cause to set aside a default and any costs associated with such activities. However, under *Kamir Garces Mejias*, 72 FR 54931 (2007), a party seeking to be excused from an ALJ order terminating a proceeding for failing to comply with the ALJ's orders is required to show good cause to excuse its default. Thus, because this proposed requirement of the rule simply codifies case law, it imposes no additional cost to registrants.

In summary, it is estimated that there will be an average of 11 cases per year, in which the registrant/applicant properly requests a hearing and will incur an economic impact of \$3,290 if this proposed rule is promulgated. Because the subject of the 11 cases can be an individual or entity (*i.e.*, offices of physicians, pharmacies, hospitals, pharmaceutical manufacturers, distributors, importers, exporters, governmental or tribal agencies, etc.), DEA compared the estimated cost of \$3,290 to the average revenue of the smallest entities for some representative North American Industry Classification System (NAICS) codes for DEA registrants using data from U.S. Census

¹⁰ Hourly rate using Laffey Matrix for lawyers with 8–10 years of experience from 6/1/18 to 5/31/19 is \$658 per hour. $\$658 \times 5 = \$3,290$.

Bureau, Statistics of U.S. Businesses (SUSB).

For example, there are a total of 174,901 entities in NAICS code, 621111—Office of Physicians (Except Mental Health Specialists). Of the 174,901 total entities, DEA estimates that 97.6% are small entities. DEA compared the estimated cost of \$3,290 to the revenue of the smallest of small entities, those with 0–4 employees. There are 95,494 entities in the 0–4 employee category with a combined total annual revenue of \$42,823,012,000, or an average of \$448,000 per entity (rounded to nearest thousand).¹¹ The estimated cost of \$3,290 is 0.73% the average annual revenue of \$448,000. The same analysis was conducted for each representative NAICS code. The cost as percent of average revenue for the smallest of small entities ranges from 0.24% to 1.30%. The table below summarizes the analysis and results.

¹¹ Data for NAICS codes are based on the 2012 SUSB Annual Datasets by Establishment Industry, June 2015. SUSB annual or static data include number of firms, number of establishments, employment, and annual payroll for most U.S. business establishments. The data are tabulated by geographic area, industry, and employment size of the enterprise. The industry classification is based on 2012 North American Industry Classification System (NAICS) codes.

Smallest Employment Size Category Analysis

NAICS code	NAICS code-description	Total number of entities	Estimated number of small entities	Employment size (number of employees)	Number of firms	Estimated receipts (\$000)	Average revenue per firm (\$000)	Cost as % of revenue
325412	Pharmaceutical Preparation Manufacturing.	930	863	0-4	297	N/A	N/A	N/A
424210	Drugs and Druggists' Sundries Merchant Wholesalers.	6,618	6,348	0-4	3,628	4,962,687	1,368	0.24%
446110	Pharmacies and Drug Stores ..	18,852	18,481	0-4	6,351	6,803,003	1,071	0.31%
541940	Veterinary Services	27,708	27,032	0-4	8,878	2,594,724	292	1.13%
621111	Offices of Physicians (except Mental Health Specialists).	174,901	170,634	0-4	95,494	42,823,012	448	0.73%
621112	Offices of Physicians, Mental Health Specialists.	10,876	10,611	0-4	8,977	2,279,458	254	1.30%
621210	Offices of Dentists	125,151	122,097	0-4	50,711	16,801,830	331	0.99%
621320	Offices of Optometrists	19,731	19,250	0-4	10,913	2,946,400	270	1.22%
621391	Offices of Podiatrists	8,122	7,924	0-4	5,284	1,529,293	289	1.14%

In conclusion, this proposed rule will have an estimated cost of \$3,290 on an average of 11 small entities per year. The \$3,290 is estimated to represent 0.24%–1.30% of annual revenue for the smallest of small entities, entities with 0–4 employees. Therefore, DEA estimates the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this rule is minimal. DEA has determined, in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, that this action would not result in any federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act of 1995

This proposed rule would not create or modify a collection of information under the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control number.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports.

21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Research, Seizures and forfeitures.

For the reasons stated in the preamble, DEA proposes to amend 21 CFR parts 1301, 1309, and 1316 as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

■ 2. In § 1301.37, revise paragraph (d) to read as follows:

§ 1301.37 Order to show cause.

* * * * *

(d)(1) *When to File: Hearing Request.*

A party that wishes to request a hearing in response to an order to show cause must file with the Office of the Administrative Law Judges and serve on the Administration a hearing request no later than fifteen (15) days after the date of receipt of the order to show cause. Service of the request on the Administration shall be accomplished by sending it to the address provided in the order to show cause.

(2) *When to File: Answer.* A party requesting a hearing shall also file with the Office of the Administrative Law Judges and serve on the Administration an answer to the order to show cause no later than thirty (30) days following the date of receipt of the order to show cause. A party shall serve its answer on the Administration at the address provided in the order to show cause.

The presiding officer may, upon a showing of good cause by the party, consider an answer that has been filed out of time.

(3) *Contents of Answer; Effect of Failure to Deny.* For each factual allegation in the order to show cause, the answer shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny the allegation. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted.

(4) *Amendments.* Prior to the issuance of the prehearing ruling, a party may as a matter of right amend its answer one time. Subsequent to the issuance of the prehearing ruling, a party may amend its answer only with leave of the presiding officer. Leave shall be freely granted when justice so requires.

* * * * *

■ 3. In § 1301.43:

- a. Revise the section heading and paragraph (a);
- b. Add a heading to paragraph (b);
- c. Revise paragraphs (c) through (e); and
- d. Add paragraph (f).

The revisions and additions read as follows:

§ 1301.43 Request for hearing or appearance; waiver; default.

(a) *Written request for a hearing.* Any person entitled to a hearing pursuant to § 1301.32 or §§ 1301.34 through 1301.36 and desiring a hearing shall, within 15 days after the date of receipt of the order to show cause (or the date of publication of notice of the application for registration in the **Federal Register** in the case of § 1301.34), file with the

Administrator a written request for hearing in the form prescribed in § 1316.47 of this chapter.

(b) *Written notice of intent.*

* * * * *

(c) *Default; criteria.* (1) Any person entitled to a hearing pursuant to § 1301.32 or §§ 1301.34 through 36 who fails to file a timely request for a hearing, shall be deemed to have waived his/her/its right to a hearing and to be in default. Any person who has failed to timely request a hearing under paragraph (a) of this section may seek to be excused from the default by filing a motion with the Office of Administrative Law Judges establishing good cause to excuse the default no later than 45 days after the date of receipt of the order to show cause. Thereafter, any person who has failed to timely request a hearing under paragraph (a) of this section and seeks to be excused from the default shall file such motion with the Office of the Administrator, which shall have exclusive jurisdiction to rule on the motion.

(2) Any person who has requested a hearing pursuant to this section but who fails to timely file an answer and who fails to demonstrate good cause for failing to timely file an answer, shall be deemed to have waived his/her/its right to a hearing and to be in default. Upon motion of the Administration, the presiding officer shall then enter an order terminating the proceeding.

(3) In the event the Administration fails to prosecute or a person who has requested a hearing fails to plead (including by failing to file an answer) or otherwise defend, said party shall be deemed to be in default and the opposing party may move to terminate the proceeding. Upon such motion, the presiding officer shall then enter an order terminating the proceeding, absent a showing of good cause by the party deemed to be in default. Upon termination of the proceeding by the presiding officer, a party may seek relief only by filing a motion establishing good cause to excuse its default with the Office of the Administrator.

(d) *Failure to file; appear.* If any person entitled to participate in a hearing pursuant to § 1301.34 or 1301.35(b) fails to file a notice of appearance, or if such person so files and fails to appear at the hearing, such person shall be deemed to have waived his/her/its opportunity to participate in the hearing, unless such person shows good cause for such failure.

(e) *Default.* A default shall be deemed to constitute a waiver of the applicant's/registrant's right to a hearing and an admission of the factual allegations of the order to show cause.

(f) *Procedure.* (1) In the event that an applicant/registrant is deemed to be in default pursuant to paragraph (c)(1) of this section, or the presiding officer has issued an order terminating the proceeding pursuant to paragraphs (c)(2) or (3) of this section, the Administration may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default pursuant to § 1316.67.

(2) In the event the Administration is deemed to be in default and the presiding officer has issued an order terminating the proceeding pursuant to paragraph (c)(3) of this section, the presiding officer shall transmit the record to the Administrator for his consideration no later than five (5) business days after the date of issuance of the order. Upon termination of the proceeding by the presiding officer, the Administration may seek relief only by filing a motion establishing good cause to excuse its default with the Office of the Administrator.

(3) A party held to be in default may move to set aside a default issued by the Administrator by filing a motion no later than 30 days from the date of issuance by the Administrator of a default. Any such motion shall be granted only upon a showing of good cause to excuse the default.

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS

■ 4. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 952, 953, 957, 958.

■ 5. In § 1309.46, revise paragraph (d) to read as follows:

§ 1309.46 Order to show cause.

* * * * *

(d)(1) *When to File: Hearing Request.* A party that wishes to request a hearing in response to an order to show cause must file with the Office of the Administrative Law Judges and serve on the Administration such request no later than fifteen (15) days following the date of receipt of the order to show cause. Service of the request on the Administration shall be accomplished by sending it to the address provided in the order to show cause.

(2) *When to File: Answer.* A party requesting a hearing shall also file with the Office of the Administrative Law Judges and serve on the Administration an answer to the order to show cause no

later than thirty (30) days following the date of receipt of the order to show cause. A party shall also serve its answer on the Administration at the address provided in the order to show cause. The presiding officer may, upon a showing of good cause by the party, consider an answer that has been filed out of time.

(3) *Contents of Answer; Effect of Failure to Deny.* For each allegation in the order to show cause, the answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny the allegation. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted.

(4) *Amendments.* Prior to the issuance of the prehearing ruling, a party may as a matter of right amend its answer one time. Subsequent to the issuance of the prehearing ruling, a party may amend its answer only with leave of the presiding officer. Leave shall be freely granted when justice so requires.

* * * * *

■ 6. In § 1309.53, revise the section heading and paragraphs (b) and (d), and add paragraph (e) to read as follows:

§ 1309.53 Request for hearing or appearance; waiver; default.

* * * * *

(b) *Default; criteria.* (1) Any person entitled to a hearing pursuant to § 1309.42 or 1309.43 who fails to file a timely request for a hearing, shall be deemed to have waived his/her/its right to a hearing and to be in default. Any person who has failed to timely request a hearing under paragraph (a) of this section may seek to be excused from the default by filing a motion with the Office of Administrative Law Judges establishing good cause to excuse the default no later than 45 days after the date of receipt of the order to show cause. Thereafter, any person who has failed to timely request a hearing under paragraph (a) of this section and seeks to be excused from the default, shall file such motion with the Office of the Administrator, which shall have exclusive jurisdiction to rule on the motion.

(2) Any person who has requested a hearing pursuant to this section but who fails to timely file an answer and who fails to demonstrate good cause for failing to timely file an answer, shall be deemed to have waived his/her/its right to a hearing and to be in default. Upon

motion of the Administration, the presiding officer shall then enter an order terminating the proceeding.

(3) In the event the Administration fails to prosecute or a person who has requested a hearing fails to plead (including by failing to file an answer) or otherwise defend, said party shall be deemed to be in default and the opposing party may move to terminate the proceeding. Upon such motion, the presiding officer shall then enter an order terminating the proceeding, absent a showing of good cause by the party deemed to be in default. Upon termination of the proceeding by the presiding officer, a party may seek relief only by filing a motion establishing good cause to excuse its default with the Office of the Administrator.

* * * * *

(d) *Default.* A default shall be deemed to constitute a waiver of the applicant's/registrant's right to a hearing and an admission of the factual allegations of the order to show cause.

(e) *Procedure.* (1) In the event that an applicant/registrant is deemed to be in default pursuant to paragraph (b)(1) of this section, or the presiding officer has issued an order termination the proceeding pursuant to paragraphs (b)(2) or (3) of this section, the Administration may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default pursuant to § 1316.67 of this chapter.

(2) In the event that the Administration is deemed to be in default and the presiding officer has issued an order terminating the proceeding pursuant to paragraph (b)(3) of this section, the presiding officer shall transmit the record to the Administrator for his consideration no later than five (5) business days after the date of issuance of the order. Upon termination of the proceeding by the presiding officer, the Administration may seek relief only by filing a motion establishing good cause to excuse its default with the Office of the Administrator.

(3) A party held to be in default may move to set aside a default issued by the Administrator by filing a motion no later than 30 days from the date of issuance by the Administrator of a default. Any such motion shall be granted only upon a showing of good cause to excuse the default.

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

■ 7. The authority citation for part 1316, subpart D, continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 875, 958(d), 965.

■ 8. Amend § 1316.47 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 1316.47 Request for hearing; answer.

(a) *Hearing request format.* Any person entitled to a hearing and desiring a hearing shall, within the period permitted for filing, file a request for a hearing that complies with the following format (see the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address):

(Date)

Drug Enforcement Administration,
Attn: Hearing Clerk/OALJ
(Mailing Address)

Subject: Request for Hearing

Dear Sir:

The undersigned ____ (Name of the Person) hereby requests a hearing in the matter of: ____

(Identification of the proceeding).

(State with particularity the interest of the person in the proceeding.)

All notices to be sent pursuant to the proceeding should be addressed to:

(Name)

(Street Address)

(City and State)

Respectfully yours,

(Signature of Person)

(b) *Filing of an answer.* A party shall file an answer as required under § 1301.37(d) or 1309.46(d) of this chapter, as applicable. The presiding officer, upon request and a showing of good cause, may grant a reasonable extension of the time allowed for filing the answer.

■ 9. Revise the first sentence of § 1316.49 to read as follows:

§ 1316.49 Waiver of hearing.

In proceedings other than those conducted under part 1301 or part 1309 of this chapter, any person entitled to a hearing may, within the period permitted for filing a request for hearing or notice of appearance, file with the Administrator a waiver of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. * * *

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020-19309 Filed 9-29-20; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2020-0154]

Anchorage Regulations; Multiple Anchorages on the Mississippi River From MM 12 AHP to MM 85 AHP

AGENCY: Coast Guard, DHS.

ACTION: Notice of inquiry; request for comments.

SUMMARY: We are requesting your comments regarding potential changes to multiple anchorages along the Mississippi River from mile marker (MM) 12 ahead of passes (AHP), to MM 85 AHP. Pilot associations have requested the Coast Guard to consider these potential changes because they believe there are currently not enough anchorage grounds along the river system to facilitate the safe anchorage of shallow and deep draft vessels. In this document we identify anchorage grounds locations that we have been requested to establish, expand or revise. We seek your comments on whether we should consider modifying our anchorage grounds regulations covering MM 12 AHP to MM 85 AHP, and if so, how.

DATES: Your comments and related material must reach the Coast Guard on or before November 30, 2020.

ADDRESSES: You may submit comments identified by docket number USCG-2020-0154 using the Federal portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this potential rulemaking, call or email Lieutenant Commander Corinne Plummer, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2375, email Corinne.M.Plummer@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP Above Head of Passes
CFR Code of Federal Regulations
COTP Captain of the Port New Orleans
CRPPA Crescent River Port Pilots' Association
DHS Department of Homeland Security
FR Federal Register
LDB Left Descending Bank
LMR Lower Mississippi River
MM Mile Marker
MNSA Maritime Navigation Safety Association

NOI Notice of Inquiry
 NPRM Notice of proposed rulemaking
 RDB Right Descending Bank
 § Section
 U.S.C. United States Code

II. Background and Purpose

The Coast Guard is issuing this Notice of Inquiry (NOI) to solicit comments from industry, the maritime community, local stakeholders and other interested persons regarding potential multiple changes to anchorages along the Lower Mississippi River (LMR). The Coast Guard was approached by industry, who identified multiple locations along the LMR where an anchorage could potentially be established, expanded or revised in order to accommodate the

increasing vessel traffic along the Lower Mississippi River. The authority for the Coast Guard to establish or amend anchorage ground regulations is found in 33 U.S.C. 471 and Department of Homeland Security Delegation No. 0170.1. The requesting document is available in the docket.

There are currently 12 established anchorage grounds along the Lower Mississippi River between MM 12 AHP and MM 85 AHP that total of 33.54 statute miles of approved anchorage area, longitudinally along the Lower Mississippi River. The potential changes would add an additional 3.75 statute miles of longitudinal anchorage area. Those additions are broken into the following: 2.65 miles of space would be

added to current anchorage grounds and 1.1 miles would be created in two new anchorage grounds locations.

At this time, the potential changes to these anchorage grounds would not affect the width of the previously established anchorage grounds, only the overall length of the anchorages. Current anchorage widths within this area of the Mississippi River from MM12–MM85 range from 400’ to 800’. The anchorage grounds widths are listed in the table below for reference purposes.

The current anchorages regulations for this area of the LMR can be found in 33 CFR 110.195. The recommended changes are listed in ascending mile-marker order as follows:

POTENTIAL CHANGES TO EXISTING ANCHORAGE GROUNDS

Anchorage name	Change	Existing location	Recommended location	Existing width	33 CFR 110.195
Boothville	Expand 0.95 Miles	MM 13.0–18.5	MM 12.05–18.5	750’	(a)(4)
Point Michel	Expand 0.8 Miles	MM 40.8–42.2	MM 40.0–42.2	500’	(a)(35)
Magnolia	Expand 0.1 Miles	MM 45.5–47.6	MM 45.4–47.6	700’	(a)(7)
Davant	Expand 0.3 Miles	MM 52.8–53.9	MM 52.5–53.9	800’	(a)(9)
Alliance	Expand 0.2 Miles	MM 63.8–65.8	MM 63.6–65.8	400’	(a)(10)
Wills Point	Shift up river 0.02 Miles and Expand 0.15 Miles	MM 66.5–67.6	MM 66.7–67.9	600’	(a)(11)
Cedar Grove	Add language to protect revetments, cables and pipelines.	MM 69.56–70.9	N/A	500’	(a)(12)
Belle Chasse	Expand 0.05 Miles	MM 73.1–75.2	MM 73.05–75.2	575’	(a)(13)
Lower 12 Mile Point	Add language to protect revetments, cables and pipelines.	MM 78.6–80.8	N/A	500’	(a)(14)
Lower 9 Mile Point ..	Expand 0.1 Miles	MM 82.7–85.0	MM 82.6–85.0	500’	(a)(15)

POTENTIAL NEW ANCHORAGE GROUNDS

Anchorage name	Change	Location
Phoenix	Establish 0.6 Miles Length x 400’ Width on the Left Descending Bank	MM 57.82–58.42
Bertrandville	Establish 0.5 Miles Length x 400’ Width on the Left Descending Bank	MM 68.5–69.0

III. Information Requested

We seek your comments on whether we should consider modifying the anchorage grounds regulations covering MM 12 AHP to MM 85 AHP based on this report, and if so, how. In particular, the Coast Guard requests your input to determine if there remains a need for additional anchorage grounds in this area, and if so, to what extent and for what purpose; if the establishment of two additional anchorage grounds and the recommended changes to expand currently regulated anchorage grounds would meet current and anticipated industry needs; or if other options should be considered.

IV. Public Participation and Request for Comments

We encourage you to submit comments through the Federal portal at <https://www.regulations.gov>. If your

material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s rulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this notice of inquiry as being available in the docket, and all public comments, will be in our online docket at [https://](https://www.regulations.gov)

www.regulations.gov and can be viewed by following that website’s instructions.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: September 18, 2020.

J.P. Nadeau,
Rear Admiral, U.S. Coast Guard, Commander, Coast Guard District Eight.

[FR Doc. 2020–21056 Filed 9–29–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R05–OAR–2018–0664; FRL–10013–18–Region 5]

Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2015 Ozone NAAQS**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before October 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0664 at <http://www.regulations.gov>, or via email to aburano.douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

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

- I. What is the background of this SIP submission?
- II. What is EPA's analysis of this SIP submission?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our September 13, 2013 Infrastructure SIP Guidance and through regional actions on infrastructure submissions (EPA's 2013 Guidance).¹ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.² EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, *etc.* that comprise its SIP.

¹ EPA explains and elaborates on these ambiguities and its approach to address them in our September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Wisconsin's infrastructure SIP to address the 2012 fine particulate matter (PM_{2.5}) NAAQS (81 FR 95043 (December 27, 2016)).

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16–71933 (Aug. 30, 2018).

II. What is EPA's analysis of this SIP submission?

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2015 ozone NAAQS, as applicable. The following review evaluates the State's submission.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.³ In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Under Wisconsin Statutes (*Wis. Stats.*) 227 and 285, the Wisconsin Department of Natural Resources (WDNR) holds the authority to create new rules and implement existing emission limits and controls. Authority to monitor, update, and implement revisions to Wisconsin's SIP, including revisions to emission limits and control measures as necessary to meet NAAQS, is contained in *Wis. Stats.* 285.11–285.19. Authority related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and performance and emissions standards, is contained in *Wis. Stats.* 285.21–285.29.

Specifically, authority for WDNR to create new rules and regulations is found in *Wis. Stats.* 227.11, 285.11, 285.17, and 285.21. *Wis. Stats.* 227.11(2) expressly confers rulemaking authority to an agency. *Wis. Stats.* 285.11(1) and (6) require that WDNR promulgate rules and establish control strategies in order to prepare and implement the SIP for the prevention, abatement, and control of air pollution in Wisconsin. *Wis. Stats.* 285.17(1) requires WDNR to classify sources or categories of sources that may cause or contribute to air pollution, and *Wis. Stats.* 285.21(1) requires that WDNR promulgate ambient air quality standards that are similar to the NAAQS.

³ See, *e.g.*, EPA's final rule on “National Ambient Air Quality Standards for Lead.” 73 FR 66964 at 67034.

EPA's 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, "an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable." WDNR identified existing controls and emission limits in the Wisconsin Administrative Code that can be applied to the 2015 ozone NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO_x), which are precursors to ozone. VOC as an ozone precursor is regulated by Wisconsin Administrative Code Chapters Natural Resources (NR) 419–425, and NO_x as an ozone precursor is regulated by NR 428.

In this rulemaking, EPA is not proposing to approve any new provisions in NR 419–425 or NR 428. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and, upon request, make these data available to EPA. EPA's review of a state's annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

In accordance with 40 CFR part 53 and 40 CFR part 58, WDNR continues to operate an air monitoring network that is used to determine compliance with the NAAQS. WDNR enters air monitoring data into AQS and provides EPA with prior notification when changes to its monitoring network or plan are being considered. Further, WDNR submits annual monitoring network plans to EPA. On October 2, 2019, EPA approved the State's 2020

Annual Air Monitoring Network Plan, including the plan for ozone. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; Minor NSR; PSD

This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet New Source Review (NSR) requirements under Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements. EPA's 2013 Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs; however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

1. Program for Enforcement of Control Measures

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the State. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties, to ensure that required measures are ultimately implemented. EPA proposes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

2. Minor NSR

An infrastructure SIP submission should identify the existing EPA-approved SIP provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant.

EPA approved Wisconsin's minor NSR program on January 18, 1995 (60 FR 3543); since that date, WDNR and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the

major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. As stated in EPA's 2013 Guidance, the CAA allows EPA to approve infrastructure SIP submissions that do not implement the 2002 NSR Reform Rules. Therefore, EPA is not proposing action on existing NSR Reform regulations for Wisconsin. EPA proposes that Wisconsin has met the minor NSR requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

3. PSD

The evaluation of each state's submission addressing the PSD requirements of section 110(a)(2)(C) covers: (i) PSD provisions that explicitly identify NO_x as a precursor to ozone in the PSD program; (ii) identification of precursors to PM_{2.5}⁴ and the identification of PM_{2.5} and PM₁₀⁵ condensables in the PSD program; (iii) PM_{2.5} increments in the PSD program; and (iv) greenhouse gas (GHG) permitting and the "Tailoring Rule" in the PSD program.⁶

Some PSD requirements under section 110(a)(2)(C) overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E), and section 110(a)(2)(J). These links are discussed in the appropriate areas below.

a. PSD Provisions That Explicitly Identify NO_x as a Precursor to Ozone in the PSD Program

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005

⁴PM_{2.5} refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, also referred to as "fine" particles.

⁵PM₁₀ refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

⁶In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 PM_{2.5} NAAQS (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_x as a precursor to ozone, PM_{2.5} precursors, PM_{2.5} and PM₁₀ condensables, PM_{2.5} increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2015 ozone NAAQS.

(70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.⁷

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including provisions specifically identifying NO_x as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683, November 29, 2005).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on February 7, 2017 (82 FR 9515), and therefore proposes that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

b. Identification of Precursors to PM_{2.5} and the Identification of PM_{2.5} and PM₁₀ Condensables in the PSD Program

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM_{2.5} and other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM_{2.5} for the PSD program to be sulfur dioxide (SO₂) and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM_{2.5} in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM_{2.5} concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM_{2.5}, the 2008 NSR Rule also required states to revise the definition of “significant” as it relates to a net emissions increase

or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define “significant” for PM_{2.5} to mean the following emissions rates: 10 tons per year (tpy) of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR 28321 at 28341, May 16, 2008).⁸

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for PM_{2.5} and PM₁₀ condensables for applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were due to EPA by May 16, 2011 (see 73 FR 28321 at 28341, May 16, 2008).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on October 16, 2014 (79 FR 62008), and therefore proposes that

⁸ EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM₁₀ nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Wisconsin's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. PM_{2.5} Increments in the PSD Program

On October 20, 2010, EPA issued the final rule on the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM_{2.5}, including a system of “increments” which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—PM_{2.5} INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-Hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new “major source baseline date” for PM_{2.5} as October 20, 2010, and a new trigger date for PM_{2.5} as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM_{2.5}. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on February 7, 2017 (82 FR 9515), and therefore proposes that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

d. GHG Permitting and the “Tailoring Rule” in the PSD Program

With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current

⁷ Similar changes were codified in 40 CFR 52.21.

requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Wisconsin has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Court's decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

EPA is planning to take additional steps to revise Federal PSD rules in light of the Supreme Court's opinion and subsequent D.C. Circuit's ruling. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process

until they have more information about the planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both court decisions.

At present, EPA has determined the Wisconsin SIP is sufficient to satisfy the requirements of section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to "anyway" sources contain limitations on GHG emissions based on the application of BACT. On August 1, 2018, EPA updated the Wisconsin SIP to include revised PSD rules to reflect both courts' decisions, and preserving PSD permitting requirements for GHGs for "anyway" sources (83 FR 37434).

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality, or from interfering with measures required of any other state to protect visibility. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of CAA section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

1. Significant Contribution to Nonattainment

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interference With Maintenance

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference

with maintenance for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

3. Interference With PSD

EPA notes that Wisconsin's satisfaction of the applicable infrastructure SIP PSD requirements for the 2015 ozone NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Wisconsin's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO_x as a precursor to ozone, explicitly identify SO₂ and NO_x as precursors to PM_{2.5}, and regulate condensable PM_{2.5} and PM₁₀ in applicability determinations and for purposes of establishing emission limits. EPA has also previously approved revisions to Wisconsin's SIP that incorporate the PM_{2.5} increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM_{2.5} per the 2010 NSR Rule. EPA is proposing that Wisconsin's SIP contains provisions that adequately address the 2015 ozone NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Wisconsin's SIP-approved NNSR regulations, specifically in chapter NR 408 of the Wisconsin Administrative Code, are consistent with 40 CFR 51.165, or 40 CFR part 51, appendix S. Therefore, EPA proposes that Wisconsin has met all of the applicable section 110(a)(2)(D)(i)(II) requirements relating to interference with PSD for the 2015 ozone NAAQS.

4. Interference With Visibility Protection

Under the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). EPA's 2013 Guidance states that

these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On August 7, 2012, EPA published its final approval of Wisconsin's regional haze plan (77 FR 46952). Therefore, EPA proposes that Wisconsin has met all the applicable section 110(a)(2)(D)(i)(II) requirements relating to interference with visibility protection for the 2015 ozone NAAQS.

5. Interstate and International Pollution Abatement

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Wisconsin's EPA-approved portion of its PSD program contains provisions requiring new or modified sources to notify neighboring states of potential negative air quality impacts. Wisconsin's submission references these provisions as being adequate to meet the requirements of section 126(a). Wisconsin has no pending obligations under section 115, and no sources in Wisconsin are the subject of an active finding under section 126. Therefore, EPA proposes that Wisconsin has met all the applicable section 110(a)(2)(D)(ii) requirements for the 2015 ozone NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources; State Board Requirements

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate Resources

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state must provide assurances that its air agency has adequate resources,

personnel, and legal authority to implement the relevant NAAQS.

Wisconsin's biennial budget ensures that EPA grant funds as well as state funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Wisconsin's Environmental Performance Partnership Agreement with EPA documents certain funding and personnel levels at WDNR. As discussed in previous sections, basic duties and authorities in the State are outlined in *Wis. Stats.* 285.11. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2015 ozone, NAAQS.

2. State Board Requirements

Section 110(a)(2)(E) also requires each SIP to set forth provisions that comply with the state board requirements of section 128 of the CAA. Section 128 contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On July 2, 2015, WDNR submitted rules from *Wis. Stats.* for incorporation into the SIP, pursuant to section 128 of the CAA. Under *Wis. Stats.* 15.05, the administrative powers and duties of the WDNR, including issuance of permits and enforcement orders, are vested in the Secretary. Therefore, Wisconsin has no further obligations under section 128(a)(1) of the CAA.

Under section 128(a)(2) of the CAA, the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest. In Wisconsin, this power is vested in the Secretary of the WDNR. *Wis. Stats.* 19.45(2) prevents financial gain of any public official, which addresses the issue of deriving any significant portion of income from persons subject to permits and enforcement orders. Additionally, *Wis. Stats.* 19.46 prevents a public official from taking actions where there is a conflict of interest. As a public official under *Wis. Stats.* 19, the Secretary of the WDNR is subject to these ethical obligations. EPA concludes that

WDNR's submission as it relates to the state board requirements under section 128 is consistent with applicable CAA requirements. EPA approved these rules on January 21, 2016 (81 FR 3334). Therefore, EPA is proposing that Wisconsin has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2015 ozone NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

In this rulemaking, EPA is not evaluating section 110(a)(2)(F) requirements relating to stationary source monitoring for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. EPA's 2013 Guidance states that infrastructure SIP submissions should specify authority, vested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Wis. Stats. 285.85 provides the requirement for WDNR to act upon a finding that an emergency episode or condition exists. The language contained in this chapter authorizes WDNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health. EPA proposes that Wisconsin has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, to the availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

Wis. Stats. 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA finding of inadequacy for the overall Wisconsin SIP and air management programs. EPA proposes that Wisconsin has met the infrastructure SIP requirements of

section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Planning Requirements of Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA will action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notification; PSD; Visibility Protection

The evaluation of the submissions from Wisconsin with respect to the requirements of section 110(a)(2)(J) are described below.

1. Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Wis. Stats. 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the state and local governments, industries, other states, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which WDNR is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of the Lake Michigan Air Directors Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of

this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

2. Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

WDNR maintains portions of its website specifically for issues related to the 2015 ozone NAAQS.⁹ Public notification is provided through this website, and through a contracted email subscription service known as "GovDelivery." Information related to monitoring sites is also found on Wisconsin's website, as is the calendar for all public events and public hearings held in the State. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

3. PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Wisconsin's PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing section 110(a)(2)(C) and section 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J).

Therefore, EPA proposes that Wisconsin has met all the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2015 ozone NAAQS.

4. Visibility Protection

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of

section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2015 ozone NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performance of air quality modeling to predict the effects on air quality from emissions of any NAAQS pollutant and the submission of such data to EPA upon request.

WDNR maintains the capability of performing computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented and more regionally directed complex photochemical grid models. WDNR collaborates with LADCO, EPA, and other Lake Michigan states in performing modeling. *Wis. Stats.* 285.11, *Wis. Stats.* 285.13, and *Wis. Stats.* 285.60–285.69 authorize WDNR to perform modeling. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2015 ozone NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951). EPA approved revisions to the program on February 28, 2006 (71 FR 9934). NR 410 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

In addition to the measures outlined in the paragraph addressing WDNR's submittals regarding consultation

⁹ <http://dnr.wi.gov/topic/AirQuality/Ozone.html>.

requirements of section 110(a)(2)(J), as contained in *Wis. Stats.* 285.13(5), the State follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. For SIP revisions covering more than one source, WDNR is required to provide the standing committees of the state legislature with jurisdiction over environmental matters

with a 60-day review period to ensure that local entities have been properly engaged in the development process. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

III. What action is EPA taking?

EPA is proposing to approve most elements of a submission from

Wisconsin certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2015 ozone NAAQS.

EPA's proposed actions for the State's satisfaction of infrastructure SIP requirements pursuant to section 110(a)(2) and NAAQS are contained in the table below.

Element	2015 Ozone
(A)—Emission limits and other control measures	A
(B)—Ambient air quality monitoring/data system	A
(C)1—Program for enforcement of control measures	A
(C)2—Minor NSR	A
(C)3—PSD	A
(D)1—I Prong 1: Interstate transport—significant contribution to nonattainment	NA
(D)2—I Prong 2: Interstate transport—interference with maintenance	NA
(D)3—II Prong 3: Interstate transport—interference with PSD	A
(D)4—II Prong 4: Interstate transport—interference with visibility protection	A
(D)5—Interstate and international pollution abatement	A
(E)1—Adequate resources	A
(E)2—State board requirements	A
(F)—Stationary source monitoring system	NA
(G)—Emergency powers	A
(H)—Future SIP revisions	A
(I)—Nonattainment planning requirements of part D	*
(J)1—Consultation with government officials	A
(J)2—Public notification	A
(J)3—PSD	A
(J)4—Visibility protection	*
(K)—Air quality modeling/data	A
(L)—Permitting fees	A
(M)—Consultation/participation by affected local entities	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
*	Not germane to infrastructure SIPs.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 2020.

Cheryl Newton,

Deputy Regional Administrator, Region 5.

[FR Doc. 2020–20516 Filed 9–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2020–0486; FRL–10015–26–OW]

Microbial and Disinfection Byproducts Rules: Public Meeting To Inform Potential Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Safe Drinking Water Act (SDWA) requires the U.S. Environmental Protection Agency (EPA) to review each national primary drinking water regulation (NPDWR) at least once every six years. As part of the “Six-Year Review”, EPA evaluates any newly available data, information, and technologies to determine if any regulatory revisions are needed. During the Agency’s third Six-Year Review (Six-Year Review 3) eight NPDWRs were identified as candidates for potential regulatory revision. EPA is hosting a public meeting on October 14 and 15, 2020, to seek public input on the Agency’s potential regulatory revisions of these eight NPDWRs including: Chlorite, *Cryptosporidium*, Haloacetic acids, Heterotrophic bacteria, *Giardia lamblia*, *Legionella*, Total Trihalomethanes, and Viruses. The eight NPDWRs are included in the following Microbial and Disinfection Byproduct (MDBP) rules: Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules, Surface Water Treatment Rule, Interim Enhanced Surface Water Treatment Rule, and Long Term 1 Enhanced Surface Water Treatment Rule. At this meeting, EPA is seeking public input on information and perspectives related to the potential regulatory revisions. EPA will consider the data and/or information discussed at this meeting, as well as at future stakeholder engagements, in its determination on whether a rulemaking to revise any MDBP regulations should be initiated. For more information on the meeting visit the EPA’s Revisions of the MDBP Rules website: www.epa.gov/dwsixyearreview/revisions-microbial-and-disinfection-byproducts-rules and go to the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The public meetings will be held on Wednesday, October 14, 2020 (11 a.m. to 5 p.m., Eastern Time), and Thursday, October 15, 2020 (11 a.m. to 4:30 p.m., Eastern Time).

ADDRESSES: The public meetings will be held in an online-only format in the *Online Meeting* section of this document.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Ashley Greene, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460 at (202) 566–1738 or green.ashley@epa.gov. For more information about the MDBP revisions or the Six-Year Review process, visit: www.epa.gov/dwsixyearreview/revisions-microbial-and-disinfection-byproducts-rules or www.epa.gov/dwsixyearreview, respectively.

SUPPLEMENTARY INFORMATION:

Registration: Individuals planning to participate in the online public meeting must register at this website www.epa.gov/dwsixyearreview/public-meeting-revisions-microbial-and-disinfection-products-rules no later than October 12, 2020. EPA will do its best to include all those interested, however, may need to limit attendance due to web conferencing size limitations and, therefore, urges potential attendees to register early. Please check the MDBP website for event materials as they become available, including a full meeting agenda and other meeting materials. Web conferencing meeting details will be emailed to registered participants in advance of the meeting. If you have any difficulty registering or have additional questions or comments about the public meeting, please email (MDBPRevisions@epa.gov).

Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Ashley Greene at (202) 566–1738 or by email at green.ashley@epa.gov. Please allow at least five business days prior to the meeting to give EPA time to process your request.

Online Meeting: This online meeting will be open to the public and EPA encourages input and will provide opportunities for public engagement. Additionally, the public will have the opportunity to provide written public input. If you are unable to participate in the meetings, you will be able to submit comments at www.regulations.gov, Docket ID No. EPA–HQ–OW–2020–0486. Meeting attendees are also encouraged to send written statements

to the public docket, as well as any scientific data they would like EPA to consider during its analysis of potential regulatory revisions. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc) must be accompanied by written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

The Microbial and Disinfection Byproduct (MDBP) Rules: MDBP rules are a series of interrelated regulations that address risks from microbial pathogens and disinfectants/disinfection byproducts in drinking water. The purpose of the Surface Water Treatment Rules (SWTRs) within the scope of the potential regulatory revisions, including the Surface Water Treatment Rule (40 CFR 141.70–141.75; June 5, 1989), Interim Enhanced Surface Water Treatment Rule (40 CFR 141.170–141.175; December 16, 1998), and Long Term 1 Enhanced Surface Water Treatment Rule (40 CFR 141.500–141.571; January 5, 2002), are to reduce disease incidence associated with pathogens, including *Cryptosporidium*, *Giardia lamblia*, *Legionella*, and viruses in drinking water. The SWTRs require PWS to filter and disinfect surface water sources to provide protection from microbial pathogens. The purpose of the Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules (63 FR 69390; December 16, 1998 and 71 FR 388; January 3, 2006, respectively) are to reduce drinking water exposure to disinfection byproducts which can form in water when disinfectants used to control microbial pathogens react with naturally occurring materials found in source water. If consumed in excess of EPA’s standard over many years, disinfection byproducts may increase health risks. On January 11, 2017 (82 FR 3518; January 11, 2017) EPA identified these MDBP rules as candidates for

revision in the Agency's review of existing national primary drinking water regulations.

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2020–21653 Filed 9–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0053; FRL–10014–74]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (August 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 30, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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>.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address:

RDfRNNotices@epa.gov. The mailing address is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the

population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 and/or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerance

1. *PP 0E8825.* (EPA–HQ–OPP–2020–0228). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requests to amend 40 CFR 180 by removing established tolerances for residues of Fluxapyroxad, (BAS 700 F); 3-(difluoromethyl)-1-methyl-N-(3',4',5'-trifluoro[1,1'-biphenyl]-2-yl)-1H-pyrazole-4-carboxamide, its metabolites, and degradates in or on the raw agricultural commodities: Fruit, pome,

group 11 at 0.8 parts per million (ppm); vegetables, fruiting, group 8 at 0.7 ppm; and cotton, undelinted seed at 0.30 ppm. *Contact:* RD.

2. *PP 0E8827.* (EPA-HQ-OPP-2020-0245). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requests to amend 40 CFR 180 by removing established tolerances for residues of fluazinam, (3-chloro-N-3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl-5-(trifluoromethyl)-2-pyridinamine) including its metabolites and degradates, in or on the raw agricultural commodities: Vegetable, legume, edible-podded, subgroup 6A, except pea at 0.10 ppm; pea and bean, succulent shelled, subgroup 6B, except pea at 0.04 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except pea at 0.02 ppm; vegetable, brassica leafy, group 5, except cabbage at 0.01 ppm; turnip, greens at 0.01 ppm. *Contact:* RD.

3. *PP 0E8833.* (EPA-HQ-OPP-2020-0336). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requests to remove established tolerances with general registrations for residues of the insecticide, methoxyfenozide, including its metabolites and degradates in or on the following commodities: Brassica, head and stem, subgroup 5A at 7.0 ppm; brassica, leafy greens, subgroup 5B at 30 ppm; cotton, undelinted seed at 2.0 ppm; date at 8.0 ppm; leaf petioles subgroup 4B at 25 ppm; leafy greens subgroup 4A at 30 ppm; lychee at 2.0 ppm; longan at 2.0 ppm; spanish lime at 2.0 ppm; turnip, greens at 30 ppm; vegetable, legume, edible podded, subgroup 6A at 1.5 ppm; pea and bean, succulent shelled, subgroup 6B at 0.2 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except pea, blackeyed, seed and pea, southern, seed a 0.50 ppm; and also to remove Section 18 emergency exemptions (time-limited tolerances) for residues of the insecticide, methoxyfenozide, including its metabolites and degradates in or on the commodities: Rice, bran at 4.0 ppm; rice, grain at 0.50 ppm. *Contact:* RD.

B. New Tolerance Exemptions for Inerts (Except PIPS)

PP IN-11391. (EPA-HQ-OPP-2020-0451) Clorox Services Company (Representing Clorox Professional Products Company), P.O. Box 493, Pleasanton, CA 94566-0803, requests to establish an exemption from the requirement of a tolerance for residues

of sodium lauroyl sarcosinate (CAS Reg. No. 137-16-6), when used as inert ingredients in pesticide formulations under 40 CFR 180.940(a) at an upper limit of 10,000 ppm. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

C. New Tolerance Exemptions for Non-Inerts (Except Pips)

PP 0E8824. (EPA-HQ-OPP-2020-0176). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540 requests, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance in or on honey and honeycomb for oxalic acid dihydrate. Oxalic acid dihydrate may be analyzed using an HPLC method with UV detection. *Contact:* RD.

D. New Tolerances for Non-Inerts

1. *PP 0E8825.* (EPA-HQ-OPP-2020-0228). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Fluxapyroxad, (BAS 700 F); 3-(difluoromethyl)-1-methyl-N-(3',4',5'-trifluoro[1,1'-biphenyl]-2-yl)-1H-pyrazole-4-carboxamide, its metabolites, and degradates in or on the raw agricultural commodities: Pomegranate at 0.2 ppm; vegetable, fruiting, group 8-10 at 0.7 ppm; fruit, pome, group 11-10 at 0.8 ppm; and cottonseed subgroup 20C at 0.3 ppm. Independently validated analytical methods have been submitted for analyzing residues of parent fluxapyroxad (BAS 700 F) plus metabolites M700F008, M700F048, and M700F002 with appropriate sensitivity in/on pomegranate. *Contact:* RD.

2. *PP 0E8826.* (EPA-HQ-OPP-2020-0227). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requests, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the sum of pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-

N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenylcarbamate), calculated as the stoichiometric equivalent of pyraclostrobin, in or on the raw agricultural commodity Pomegranate at 0.3 ppm. In plants the method of analysis is aqueous organic solvent extraction, column clean up and quantitation by LC/MS/MS. *Contact:* RD.

3. *PP 0E8827.* (EPA-HQ-OPP-2020-0245). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fluazinam, (3-chloro-N-3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl-5-(trifluoromethyl)-2-pyridinamine) including its metabolites and degradates, in or on the raw agricultural commodities.

Individual commodities of Proposed Crop Subgroup 6-18A: Edible podded bean legume vegetable subgroup including: French bean, edible podded at 0.1 ppm; garden bean, edible podded at 0.1 ppm; green bean, edible podded at 0.1 ppm; scarlet runner bean, edible podded at 0.1 ppm; snap bean, edible podded at 0.1 ppm; kidney bean, edible podded at 0.1 ppm; navy bean, edible podded at 0.1 ppm; wax bean, edible podded at 0.1 ppm; asparagus bean, edible podded at 0.1 ppm; catjang bean, edible podded at 0.1 ppm; Chinese longbean, edible podded at 0.1 ppm; cowpea, edible podded at 0.1 ppm; moth bean, edible podded at 0.1 ppm; mung bean, edible podded at 0.1 ppm; rice bean, edible podded at 0.1 ppm; urd bean, edible podded at 0.1 ppm; yardlong bean, edible podded at 0.1 ppm; goa bean, edible podded at 0.1 ppm; guar bean, edible podded at 0.1 ppm; jackbean, edible podded at 0.1 ppm; lablab bean, edible podded at 0.1 ppm; vegetable soybean, edible podded at 0.1 ppm; sword bean, edible podded at 0.1 ppm; winged pea, edible podded at 0.1 ppm; velvet bean, edible podded at 0.1 ppm.

Individual commodities of Proposed Crop Subgroup 6-19B: Edible podded pea legume vegetable subgroup including: Dwarf pea, edible podded at 0.15 ppm; edible podded pea at 0.15 ppm; green pea, edible podded at 0.15 ppm; snap pea, edible podded at 0.15 ppm; snow pea, edible podded at 0.15 ppm; sugar snap pea, edible podded at 0.15 ppm; grass-pea, edible podded at 0.15 ppm; lentil, edible podded at 0.15 ppm; pigeon pea, edible podded at 0.15

ppm; chickpea, edible podded at 0.15 ppm.

Individual commodities of Proposed Crop Subgroup 6–19C: Succulent shelled bean subgroup including: Lima bean, succulent shelled at 0.04 ppm; scarlet runner bean, succulent shelled at 0.04 ppm; wax bean, succulent shelled at 0.04 ppm; blackeyed pea, succulent shelled at 0.04 ppm; moth bean, succulent shelled at 0.04 ppm; catjang bean, succulent shelled at 0.04 ppm; cowpea, succulent shelled at 0.04 ppm; crowder pea, succulent shelled 0.04 ppm; southern pea, succulent shelled at 0.04 ppm; Andean lupin, succulent shelled at 0.04 ppm; blue lupin, succulent shelled at 0.04 ppm; grain lupin, succulent shelled at 0.04 ppm; sweet lupin, succulent shelled at 0.04 ppm; white lupin, succulent shelled at 0.04 ppm; white sweet lupin, succulent shelled at 0.04 ppm; yellow lupin, succulent shelled at 0.04 ppm; broad bean, succulent shelled at 0.04 ppm; jackbean, succulent shelled at 0.04 ppm; goa bean, succulent shelled at 0.04 ppm; lablab bean, succulent shelled at 0.04 ppm; vegetable soybean, succulent shelled at 0.04 ppm; velvet bean, succulent shelled at 0.04 ppm.

Individual commodities of Proposed Crop Subgroup 6–19D: Succulent shelled pea subgroup including: Chickpea, succulent shelled at 0.03 ppm; English pea, succulent shelled at 0.03 ppm; garden pea, succulent shelled at 0.03 ppm; green pea, succulent shelled at 0.03 ppm; pigeon pea, succulent shelled at 0.03 ppm; lentil, succulent shelled at 0.03 ppm.

Individual commodities of Proposed Crop Subgroup 6–19E: Dried shelled bean, except soybean, subgroup including: African yam-bean, dry seed at 0.02 ppm; American potato bean, dry seed at 0.02 ppm; Andean lupin bean, dry seed at 0.02 ppm; blue lupin bean, dry seed at 0.02 ppm; grain lupin bean, dry seed at 0.02 ppm; sweet lupin bean, dry seed at 0.02 ppm; white lupin bean, dry seed at 0.02 ppm; white sweet lupin bean, dry seed at 0.02 ppm; yellow lupin bean, dry seed at 0.02 ppm; black bean, dry seed at 0.02 ppm; cranberry bean, dry seed at 0.02 ppm; dry bean, dry seed at 0.02 ppm; field bean, dry seed at 0.02 ppm; French bean, dry seed at 0.02 ppm; garden bean, dry seed at 0.02 ppm; great northern bean, dry seed at 0.02 ppm; green bean, dry seed at 0.02 ppm; kidney bean, dry seed at 0.02 ppm; Lima bean, dry seed at 0.02 ppm; navy bean, dry seed at 0.02 ppm; pink bean, dry seed at 0.02 ppm; pinto bean, dry seed at 0.02 ppm; red bean, dry seed at 0.02 ppm; scarlet runner bean, dry seed at 0.02 ppm; tepary bean, dry seed at 0.02 ppm; yellow bean, dry seed at

0.02 ppm; adzuki bean, dry seed at 0.02 ppm; blackeyed pea, dry seed at 0.02 ppm; asparagus bean, dry seed at 0.02 ppm; catjang bean, dry seed at 0.02 ppm; Chinese longbean, dry seed at 0.02 ppm; cowpea, dry seed at 0.02 ppm; crowder pea, dry seed at 0.02 ppm; mung bean, dry seed at 0.02 ppm; moth bean, dry seed at 0.02 ppm; rice bean, dry seed at 0.02 ppm; southern pea, dry seed at 0.02 ppm; urd bean, dry seed at 0.02 ppm; yardlong bean, dry seed at 0.02 ppm; broad bean, dry seed at 0.02 ppm; guar bean, dry seed at 0.02 ppm; goa bean, dry seed at 0.02 ppm; horse gram, dry seed at 0.02 ppm; jackbean, dry seed at 0.02 ppm; lablab bean, dry seed at 0.02 ppm; morama bean, dry seed at 0.02 ppm; sword bean, dry seed at 0.02 ppm; winged pea, dry seed at 0.02 ppm; velvet bean, dry seed at 0.02 ppm; vegetable soybean, dry seed at 0.02 ppm.

Individual commodities of Proposed Crop Subgroup 6–19F: Dried shelled pea subgroup including: Field pea, dry seed at 0.04 ppm; dry pea, dry seed at 0.04 ppm; green pea, dry seed at 0.04 ppm; garden pea, dry seed at 0.04 ppm; chickpea, dry seed at 0.04 ppm; lentil, dry seed at 0.04 ppm; grass-pea, dry seed at 0.04 ppm; pigeon pea, dry seed at 0.04 ppm; pea, field, hay at 40 ppm; pea, field, vines at 6 ppm; tomato subgroup 8–10A at 1.5 ppm; papaya at 3 ppm; vegetable, brassica, head and stem, group 5–16, except cabbage at 0.01 ppm; brassica, leafy greens, subgroup 4–16B at 0.01 ppm; kohlrabi at 0.01 ppm. An analytical method using LC–MS/MS for the determination of fluazinam and AMGT residues on peas, tomatoes and papaya was developed. *Contact*: RD.

4. *PP 0E8833*. (EPA–HQ–OPP–2020–0336). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing the following: Tolerances with general registrations for residues of the insecticide, methoxyfenozide, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring only methoxyfenozide (3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide) in or on the commodities: Vegetable, leafy, group 4–16 at 30 ppm; vegetable, brassica, head and stem, group 5–16 at 7 ppm; celtuce at 25 ppm; fennel, Florence, fresh leaves and stalk at 25 ppm; kohlrabi at 7 ppm; leaf petiole vegetable subgroup 22B at 25 ppm; tropical and subtropical, palm

fruit, edible peel, subgroup 23C at 8 ppm; tropical and subtropical, small fruit, inedible peel, subgroup 24A at 2 ppm; cottonseed subgroup 20C at 7 ppm; French bean, edible podded at 2 ppm; garden bean, edible podded at 2 ppm; green bean, edible podded at 2 ppm; scarlet runner bean, edible podded at 2 ppm; snap bean, edible podded at 2 ppm; kidney bean, edible podded at 2 ppm; navy bean, edible podded at 2 ppm; wax bean, edible podded at 2 ppm; asparagus bean, edible podded at 2 ppm; catjang bean, edible podded at 2 ppm; chinese longbean, edible podded at 2 ppm; cowpea, edible podded at 2 ppm; moth bean, edible podded at 2 ppm; mung bean, edible podded at 2 ppm; rice bean, edible podded at 2 ppm; urd bean, edible podded at 2 ppm; yardlong bean, edible podded at 2 ppm; goa bean, edible podded at 2 ppm; guar bean, edible podded at 2 ppm; jackbean, edible podded at 2 ppm; lablab bean, edible podded at 2 ppm; vegetable soybean, edible podded at 2 ppm; sword bean, edible podded at 2 ppm; winged pea, edible podded at 2 ppm; velvet bean, edible podded at 2 ppm; dwarf pea, edible podded at 2 ppm; edible podded pea, edible podded at 2 ppm; green pea, edible podded at 2 ppm; snap pea, edible podded at 2 ppm; snow pea, edible podded at 2 ppm; sugar snap pea, edible podded at 2 ppm; grass-pea, edible podded at 2 ppm; lentil, edible podded at 2 ppm; pigeon pea, edible podded at 2 ppm; chickpea, edible podded at 2 ppm; Lima bean, succulent shelled at 0.3 ppm; scarlet runner bean, succulent shelled at 0.3 ppm; wax bean, succulent shelled at 0.3 ppm; blackeyed pea, succulent shelled at 0.3 ppm; moth bean, succulent shelled at 0.3 ppm; catjang bean, succulent shelled at 0.3 ppm; cowpea, succulent shelled at 0.3 ppm; crowder pea, succulent shelled at 0.3 ppm; southern pea, succulent shelled at 0.3 ppm; Andean lupin, succulent shelled at 0.3 ppm; blue lupin, succulent shelled at 0.3 ppm; grain lupin, succulent shelled at 0.3 ppm; sweet lupin, succulent shelled at 0.3 ppm; white lupin, succulent shelled at 0.3 ppm; white sweet lupin, succulent shelled at 0.3 ppm; yellow lupin, succulent shelled at 0.3 ppm; broad bean, succulent shelled at 0.3 ppm; jackbean, succulent shelled at 0.3 ppm; goa bean, succulent shelled at 0.3 ppm; lablab bean, succulent shelled at 0.3 ppm; vegetable soybean, succulent shelled at 0.3 ppm; velvet bean, succulent shelled at 0.3 ppm; chickpea, succulent shelled at 0.3 ppm; English pea, succulent shelled at 0.3 ppm; garden pea, succulent shelled at 0.3 ppm; Green pea, succulent shelled at 0.3

ppm; Pigeon pea, succulent shelled at 0.3 ppm; lentil, succulent shelled at 0.3 ppm; African yam-bean, dry seed at 0.5 ppm; American potato bean, dry seed at 0.5 ppm; Andean lupin bean, dry seed at 0.5 ppm; blue lupin bean, dry seed at 0.5 ppm; grain lupin bean, dry seed at 0.5 ppm; sweet lupin bean, dry seed at 0.5 ppm; white lupin bean, dry seed at 0.5 ppm; white sweet lupin bean, dry seed at 0.5 ppm; yellow lupin bean, dry seed at 0.5 ppm; black bean, dry seed at 0.5 ppm; cranberry bean, dry seed at 0.5 ppm; dry bean, dry seed at 0.5 ppm; field bean, dry seed at 0.5 ppm; French bean, dry seed at 0.5 ppm; garden bean, dry seed at 0.5 ppm; great northern bean, dry seed at 0.5 ppm; green bean, dry seed at 0.5 ppm; kidney bean, dry seed at 0.5 ppm; Lima bean, dry seed at 0.5 ppm; navy bean, dry seed at 0.5 ppm; pink bean, dry seed at 0.5 ppm; pinto bean, dry seed at 0.5 ppm; red bean, dry seed at 0.5 ppm; scarlet runner bean, dry seed at 0.5 ppm; tepary bean, dry seed at 0.5 ppm; yellow bean, dry seed at 0.5 ppm; adzuki bean, dry seed at 0.5 ppm; asparagus bean, dry seed at 0.5 ppm; catjang bean, dry seed at 0.5 ppm; Chinese longbean, dry seed at 0.5 ppm; cowpea, dry seed at 0.5 ppm; crowder pea, dry seed at 0.5 ppm; mung bean, dry seed at 0.5 ppm; moth bean, dry seed at 0.5 ppm; rice bean, dry seed at 0.5 ppm; urd bean, dry seed at 0.5 ppm; yardlong bean, dry seed at 0.5 ppm; broad bean, dry seed at 0.5 ppm; guar bean, dry seed at 0.5 ppm; goa bean, dry seed at 0.5 ppm; horse gram, dry seed at 0.5 ppm; jackbean, dry seed at 0.5 ppm; lablab bean, dry seed at 0.5 ppm; morama bean, dry seed at 0.5 ppm; sword bean, dry seed at 0.5 ppm; winged pea, dry seed at 0.5 ppm; velvet bean, seed, dry seed at 0.5 ppm; vegetable soybean, dry seed at 0.5 ppm; field pea, dry seed at 0.5 ppm; dry pea, dry seed at 0.5 ppm; green pea, dry seed at 0.5 ppm; garden pea, dry seed at 0.5 ppm; chickpea, dry seed at 0.5 ppm; lentil, dry seed at 0.5 ppm; grass-pea, dry seed at 0.5 ppm; pigeon pea, dry seed at 0.5 ppm. Also, tolerances with regional registrations are requested for residues of the insecticide, methoxyfenozide, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring only methoxyfenozide (3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide) in or on the commodities: Rice, grain at 30 ppm; rice, hulls at 55 ppm; rice, straw at 30 ppm. Adequate methods are available for tolerance enforcement in primary crops and animal commodities. *Contact:* RD.

5. *PP 0E8848.* (EPA-HQ-OPP-2019-0233). Interregional Research Project No. 4 (IR-4), IR-4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR part 180 by establishing tolerances for residues of 2,4-D in or on the raw agricultural commodity Sesame, seed at 0.05 ppm. An adequate GC/ECD enforcement method for plants (designated as EN-CAS Method No. ENC-2/93) which has been independently validated. Adequate radiovalidation data have been submitted and evaluated for the enforcement method using samples from the wheat metabolism study. *Contact:* RD.

6. *PP 9E8745.* (EPA-HQ-OPP-2019-0233). Interregional Research Project No. 4 (IR-4), IR-4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR part 180 by establishing tolerances for residues of 2,4-D in or on the raw agricultural commodities: Wheatgrass, intermediate, bran at 4 ppm; wheatgrass, intermediate, grain at 2 ppm; wheatgrass, intermediate, straw at 50 ppm; and wheatgrass, intermediate, forage at 25 ppm. An adequate GC/ECD enforcement method for plants (designated as EN-CAS Method No. ENC-2/93) which has been independently validated. Adequate radiovalidation data have been submitted and evaluated for the enforcement method using samples from the wheat metabolism study. *Contact:* RD.

7. *PP 9E8819.* (EPA-HQ-OPP-2020-0050). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709 requests to establish a tolerance in 40 CFR part 180.589 for residues of the fungicide boscalid in or on tea at 80 ppm. The gas chromatography using mass spectrometry (GC/MS) or liquid chromatography in tandem mass spectrometry detection (LC/MS/MS) method are used to measure and evaluate the chemical boscalid. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: September 10, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020-21184 Filed 9-29-20; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2018-0042; FXES1113090000-167-FF09E42000]

RIN 1018-BD00

Endangered and Threatened Wildlife and Plants; Reclassification of *Layia carnosa* (Beach Layia) From Endangered to Threatened Species Status With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the plant beach layia (*Layia carnosa*) from an endangered to a threatened species under the Endangered Species Act of 1973, as amended (Act). This proposed reclassification is based on our evaluation of the best available scientific and commercial information, which indicates that the threats acting upon beach layia continue at the population or rangewide scales, albeit to a lesser degree than at the time of listing, and we find that beach layia meets the statutory definition of a threatened species. We also propose to issue protective regulations pursuant to section 4(d) of the Act (“4(d) rule”) that are necessary and advisable to provide for the conservation of beach layia. We seek information and comments from the public regarding this proposed rule. **DATES:** We will accept comments received or postmarked on or before November 30, 2020. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 16, 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-R8-ES-2018-0042, 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-R8-ES-2018-0042, 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 Information Requested, below, for more information).

Availability of supporting materials:

A copy of the species status assessment (SSA) report referenced throughout this document can be viewed on the internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042, or at the Arcata Fish and Wildlife Office’s website at <http://www.fws.gov/Arcata/>.

FOR FURTHER INFORMATION CONTACT:

Jennifer Norris, Assistant Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Rd., Arcata, CA 95521; telephone 707–822–7201. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

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 seven appropriate specialists regarding the species status assessment (SSA) report, which informed the proposed reclassification portion of this proposed rule. The purpose of peer review is to ensure that our reclassification determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in beach layia ecology, habitat, and threats to the species. We received a response from four of the seven peer reviewers, which we considered in our SSA report and this proposed rule. Additionally, we will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Information Requested

We intend any final action resulting from this proposal 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 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 determination may differ from this proposal. We particularly seek comments concerning:

(1) Reasons why we should or should not reclassify beach layia from an endangered species to a threatened species under the Act (16 U.S.C. 1531 *et seq.*);

(2) New biological or other relevant data concerning any threat (or lack thereof) to this species (for example, those associated with climate change);

(3) New information on any efforts by the State or other entities to protect or otherwise conserve the species;

(4) New information concerning the range, distribution, and population size or trends of this species; and

(5) New information on the current or planned activities in the habitat or range that may adversely affect or benefit the species.

(6) Comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of the proposed 4(d) rule.

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.

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**.

All comments submitted electronically via <http://www.regulations.gov> will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on the internet at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Please note that submissions merely stating support for or opposition to the

reclassification 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 threatened species must be made “solely on the basis of the best scientific and commercial data available.”

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests for a public hearing must be received by the date specified in **DATES** at 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).

Species Status Assessment

A species status assessment (SSA) team prepared an SSA report for beach layia. 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 beach layia, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. As discussed above under Peer Review, the SSA report underwent independent peer review by scientists with expertise in beach layia ecology, habitat management, and stressors that negatively affect the species. The SSA report can be found on the internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042, and at the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On June 22, 1992, we published a final rule (57 FR 27848) to list beach layia as an endangered species. On September 29, 1998, we finalized a recovery plan for this and six other coastal species (Service 1998, entire). In 2011, we completed a 5-year review (Service 2011, entire) and concluded that there was evidence to support a decision to reclassify beach layia from

an endangered species to a threatened species under the Act. We announced the availability of this review on April 27, 2012 (77 FR 25112).

I. Proposed Reclassification Determination

Background

It is our intent to discuss only those topics directly related to the reclassification of beach layia in this proposed rule. For more information on the species description, life history, genetics, and habitat of beach layia, please refer to the May 8, 2018, SSA report (Service 2018, entire), which is a comprehensive assessment of the biological status of beach layia. At the time of listing (57 FR 27848; June 22, 1992), we determined that human-induced disturbances (particularly off-highway vehicle (OHV) activity, but also other disturbances from agriculture, pedestrians, development, etc.) were significant threats to beach layia, resulting in ongoing negative population or rangewide impacts. Thus, we determined that the best available information indicated that the species was in danger of extinction throughout all of its range. Since that time, these activities have been significantly reduced, especially OHV activity, with records of the species demonstrating positive responses in abundance. Additionally, significant areas have been set aside as preserves and conservation areas. After taking into consideration our threats analysis and recovery criteria (Service 1998, pp. 43–48), we have determined that the species no longer meets the definition of an endangered species, but does meet the definition of a threatened species (likely to become an endangered species within the foreseeable future). Given this information, the best available scientific and commercial information now indicate that the species has improved to the point that it can be downlisted.

The SSA report provides a thorough account of the species' overall condition currently and into the future. In this section, we summarize the conclusions of that assessment, including: (1) The species' description, ecology, habitat, and resource needs; (2) beach layia's current condition, including population abundance, distribution, and factors affecting its viability; and (3) potential future conditions. The full report can be accessed on the internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042.

Species Description

Beach layia is a succulent annual herb belonging to the sunflower family (Asteraceae). Plants range up to 6 inches (in) (15.2 centimeter (cm)) tall and 16 in (40.6 cm) across (Baldwin *et al.* 2012, p. 369). Characteristics distinguishing beach layia from similar species include its fleshy leaves; inconspicuous flower heads with short (0.08 to 0.1 in (2 to 2.5 millimeter (mm)) long) white ray flowers (occasionally purple) and yellow disk flowers; and bristles around the top of the one-seeded achene, or dry fruit (Service 1998, p. 43).

Ecology, Habitat, and Resource Needs of Beach Layia

Beach layia germinates during the rainy season between fall and mid-winter, blooms in spring (March to July), and completes its life cycle before the dry season (July–September) (Service 1998, p. 45). Populations tend to be patchy and subject to large annual fluctuations in size and dynamic changes in local distribution associated with the shifts in dune blowouts, remobilization, and natural dune stabilization that occur in the coastal dune ecosystem (Service 1998, p. 45). Beach layia plants often occur where sparse vegetation traps wind-dispersed seeds, but causes minimal shading. Seeds are dispersed by wind mostly during late spring and summer months (Service 1998, p. 45). Additionally, beach layia is self-compatible (*i.e.*, able to be fertilized by its own pollen), capable of self-pollination, and is visited by a variety of insects that may assist in cross-pollination (Sahara 2000, entire). Although the role of pollinators is currently unclear, sexual reproduction does add to genetic diversity.

Beach layia occurs in open spaces of sandy soil between the low-growing perennial plants in the *Abronia latifolia*–*Ambrosia chamissonis* herbaceous alliance (dune mat) and *Leymus mollis* herbaceous alliance (sea lyme grass patches) (Sawyer *et al.* 2009, pp. 743–745, 958–959). Typically, the total vegetation cover in both communities is relatively sparse, and many annual species, including beach layia, colonize the space between established, tufted perennials. Beach layia can also occur in narrow bands of moderately disturbed habitat along the edges of trails and roads in dune systems dominated by invasive species.

Coastal dune systems are composed of a mosaic of vegetation communities of varying successional stages (see additional discussion in section 4.4 of the SSA report (Service 2018, pp. 9–11).

Beach layia occurs in early to mid-successional communities in areas where sand is actively being deposited or eroding. Too much sand movement prevents plants from establishing, but areas with some movement on a periodic basis support early successional communities. Movement of sand by wind is essential for the development and sustainability of a dune system. Wind is also important to beach layia specifically because it is the mechanism by which seeds are dispersed. The achenes (a small, dry, one-seeded fruit that does not open to release the seed) have pappus (feathery bristles) that allow them to be carried by wind for a short distance. Although not all seeds may land on suitable habitat, this adaptation allows the small annual to spread across the landscape into uninhabited areas.

As a winter germinating annual, beach layia requires rainfall during the winter months (November through February) for germination and, although it is relatively tolerant to the drought-like conditions of upland dunes, it does need some moisture through the spring to prevent desiccation. Moisture also reduces the risk of burial, as dry sand is more mobile and mortality caused by burial has been documented (Imper 2014, p. 6).

The overall resource needs that beach layia requires in order for individuals to complete their life cycles and for populations to maintain viability are:

- (1) Sandy soils with sparse native vegetation cover,
- (2) Rainfall during the winter germination period,
- (3) Sunlight (full sun exposure for photosynthesis), and
- (4) Unknown degree of cross-pollination (to add to genetic diversity).

Species Distribution and Abundance

For the purposes of our analysis as summarized in our SSA report (Service 2018, entire), we grouped the populations by ecoregions based on average annual rainfall (precipitation is directly correlated with abundance for this species), habitat characteristics, and distance between population centers. The North Coast Ecoregion contains the largest and most resilient populations and receives the highest average annual rainfall. The Central Coast Ecoregion receives less rain than the North Coast but more than the South Coast, and is comprised of three small populations on the Monterey peninsula that are less resilient due to low abundance, although habitat quality is high at two of the sites. The South Coast Ecoregion, both historically and currently, consists of a single population on the

Vandenberg Air Force Base (AFB). Average annual rainfall varies across the three ecoregions. Rainfall in the North Coast Ecoregion is around 38 in (96 cm), while the Central Coast Ecoregion receives 20 in (51 cm), and the South Coast Ecoregion receives 14 in (36 cm) (National Oceanic and Atmospheric Administration (NOAA) 2017).

Historical distribution of beach layia is similar to that known currently, while abundance values have increased, primarily due to increased survey efforts, amelioration of some threats, and a better understanding of the species' reproduction pattern following years with high amounts of rainfall. The current distribution includes populations spread across dune systems in the following geographic areas (ecoregions) covering more than 500 miles (mi) (805 kilometers (km)) of shoreline in northern, central, and southern California (see figures 7–13 and table 2 in the SSA report (Service 2018, pp. 15–24)):

- North Coast Ecoregion:

Humboldt County—Freshwater Lagoon Spit, Humboldt Bay area, mouth of the Eel River, McNutt Gulch, and mouth of the Mattole River

Marin County—Point Reyes National Seashore

- Central Coast Ecoregion:

Monterey County—Monterey Peninsula

- South Coast Ecoregion:

Santa Barbara County—Vandenberg AFB (located on part of the Guadalupe-Nipomo Dunes)

Of the known historical populations, four are considered extirpated, including the San Francisco population, the Point Pinos population in the Monterey area, and two populations north of the Mad River in Humboldt County. All currently extant populations were known at the time of listing and when the recovery plan was finalized (1992 and 1998, respectively), with the exception of the Freshwater Lagoon population discovered in 2000, at the far northern extent of the species' range (see table, below). The total

number of individuals across the range of the species reported in the recovery plan was 300,000. However, sampling data collected at the Lanphere Dunes that same year yielded an estimate of over one million plants for that subpopulation alone, which indicates the estimate in the recovery plan was substantially lower than the actual number of individuals (Pickart 2018, pers. comm.).

Current conditions and trend information (when available) are summarized below for the 13 extant populations (including the North Spit Humboldt Bay population that is comprised of 8 subpopulations and the largest proportion of plants throughout the species' range). Information about extirpated populations is also shown in the table, below. Additional information on current conditions of these populations, as well as information about the four extirpated populations, is found in section 7.0 of the SSA report (Service 2018, pp. 25–38).

TABLE OF BEACH LAYIA'S HISTORICAL AND CURRENT POPULATIONS, SUBPOPULATIONS, OWNERSHIP, AND ABUNDANCE ESTIMATES, BASED ON THE BEST AVAILABLE SCIENTIFIC AND COMMERCIAL INFORMATION

Population	Subpopulation	Status	Ownership	2017 Acres	2017 Abundance estimate
NORTH COAST ECOREGION (Humboldt County)					
Freshwater Lagoon Spit	.....	Extant	National Park Service	3 ¹	842. ¹
Mouth of Little River	.....	Extirpated ²	California State Parks	0	N/A.
Mouth of Mad River	.....	Extirpated ²	Humboldt County	0	N/A.
North Spit Humboldt Bay.	Mad River Beach	Extant	Humboldt County, Humboldt Bay National Wildlife Refuge (Refuge).	unknown	unknown.
	Bair/Woll	Extant	Refuge, Private	13 ³	unknown.
	Lanphere Dunes	Extant	Refuge	33 ³	1.3 million. ³
	Ma-le'l North	Extant	Refuge	29 ³	1.3 million. ³
	Ma-le'l South	Extant	Bureau of Land Management (BLM).	48 ³	2.1 million. ³
	Manila North	Extant	Friends of the Dunes, Manila Community Services District.	82 ³	1.4 million. ³
	Manila South	Extant	Private	47 ³	unknown.
	Samoa/Eureka Dunes	Extant	BLM, City of Eureka	49 ³	6.7 million. ³
Elk River	.....	Extant	City of Eureka	15 ³	468,000.
South Spit Humboldt Bay.	.....	Extant	California Department of Fish and Wildlife (CDFW), BLM.	83 ³	6.1 million. ³
North Spit Eel River	.....	Extant	CDFW	37 ³	4.7 million. ³
South Spit Eel River	.....	Extant	Wildlands Conservancy	1.5 ³	11,307. ⁴
McNutt Gulch	.....	Extant	Private	1 ⁵	unknown.
Mouth of Mattole River	.....	Extant	BLM	27 ²	3.1 million. ⁶
NORTH COAST ECOREGION (Marin County)					
Point Reyes NS	.....	Extant	National Park Service	146 ⁷	2.7 million. ⁷
CENTRAL COAST ECOREGION (San Francisco County)					
San Francisco	.....	Extirpated	.....	0	N/A.
CENTRAL COAST ECOREGION (Monterey County)					
Point Pinos	.....	Extirpated	City of Pacific Grove	0	N/A.
Asilomar State Beach	.....	Extant	California State Parks	0.17 ⁸	1,541. ⁸
Indian Village Dunes	.....	Extant	Private	0.55 ⁹	1,200. ¹⁰
Signal Hill Dunes	.....	Extant	Private	1 ⁵	unknown.

TABLE OF BEACH LAYIA'S HISTORICAL AND CURRENT POPULATIONS, SUBPOPULATIONS, OWNERSHIP, AND ABUNDANCE ESTIMATES, BASED ON THE BEST AVAILABLE SCIENTIFIC AND COMMERCIAL INFORMATION—Continued

Population	Subpopulation	Status	Ownership	2017 Acres	2017 Abundance estimate
SOUTH COAST ECOREGION (Santa Barbara County)					
Vandenberg AFB	Extant	Department of Defense	0.83 ¹¹	5,069. ¹¹

¹ Census and mapping conducted by the National Park Service (Julian 2017, pers. comm.).
² California Natural Diversity Database (California Natural Diversity Database (CNDDB); 2017).
³ Mapping and population estimate conducted by the Arcata Fish and Wildlife Office, 2017.
⁴ Census conducted by the Arcata Fish and Wildlife Office (Goldsmith 2017, pers. obs.).
⁵ Actual amount of occupied habitat not determined; conservative estimate.
⁶ Estimate based on average density from monitoring data collected by BLM (Hassett 2017, pers. comm.).
⁷ Point Reyes NS, mapping from 2001–2003 and 2017 sampling conducted in Abbots Lagoon area (Parsons 2017, pers. comm.).
⁸ Mapping and census conducted by California State Parks (Gray 2017, pers. comm.).
⁹ Mapping conducted as part of a capstone project by a student at Monterey Bay State University (Johns 2009).
¹⁰ Estimate provided by consultant (Dorrell-Canepa 2017).
¹¹ Mapping and census conducted by Santa Barbara Botanic Garden (Schneider and Calloway 2017).

Freshwater Lagoon Spit Population

This is the northern-most population of beach layia, which was discovered during spring 2000, in northern Humboldt County at Redwood National Park, currently encompassing approximately 3 acres (ac) (1.2 hectares (ha)) (Julian 2017, pers. comm.). A census of the population has been conducted every year since 2000, and results indicate the population and individual patches fluctuate substantially, with a peak of 11,110 plants recorded in 2003, and as few as 263 plants in 2014 (Julian 2017, pers. comm.) (see figure 14 in the SSA report). The overall trend of this population is declining, likely due to drought conditions and high cover of native grasses (red fescue (*Festuca rubra*)) adversely affecting its resource needs (i.e., reduction of area of sparse vegetative cover and sunlight).

North Spit Humboldt Bay Population

Mad River Beach Subpopulation: The Mad River Beach subpopulation is the northern-most subpopulation (one of eight) within the North Spit Humboldt Bay population (hereafter referred to as “North Spit”). There is little information available for this subpopulation, which resides on Humboldt County-owned land south of the mouth of the Mad River, as well as the nearby Humboldt Bay National Wildlife Refuge-owned Long parcel. Beach layia is fairly abundant and widely distributed within the dune mat habitat in this area (Goldsmith 2018, pers. obs.). However, the vegetation community is dominated by invasive, nonnative species including European beachgrass (*Ammophila arenaria*), annual grasses (ripgut brome (*Bromus diandrus*) and quaking grass (*Briza maxima*)), and yellow bush lupine (*Lupinus arboreous*) (Goldsmith 2018,

pers. obs.). The subpopulation is conservatively estimated to encompass approximately 1 ac (0.4 ha), although abundance, distribution, and trend information is unknown. Suitable habitat is limited due to over-stabilization caused by a heavy invasion of invasive nonnative species. No efforts to restore ecosystem function are currently under way, nor does the County or Refuge have any restoration planned at this time.

Bair/Woll Subpopulation: This subpopulation occurs on the Refuge-owned Bair parcel and privately owned Woll parcel; acquisition and restoration of the entire subpopulation is a high priority for the Refuge (Refuge 2013, p. 2). The majority of the area is dominated by nonnative, invasive species including European beachgrass, iceplant (*Carpobrotus edulis* and *C. chilensis*), yellow bush lupine, and annual grasses (Pickart 2018, pers. comm.). To date, restoration has occurred on the southwest corner of the Bair parcel. The subpopulation encompasses approximately 13 ac (5.3 ha), although abundance and trend information, and adequacy of resource needs—beyond the visible reduction of sparse vegetative cover—are unknown.

Lanphere Dunes Subpopulation: This subpopulation occurs on the Lanphere Dunes Unit of the Refuge and encompasses a conservative estimate of approximately 33 ac (13 ha) (Service 2017, unpublished data). Restoration has been underway since the 1980s, including removal of invasive plants in an effort to restore ecosystem function. Ongoing nonnative species removal/maintenance appears necessary in this area to ensure that beach layia’s resource needs are met. Over the years, this population of beach layia has responded positively to restoration actions and negatively to lack of rainfall

in the winter months (see figure 15 in the SSA report). In 2017, abundance was estimated for both Lanphere Dunes and Ma-le’l North (see below) at approximately 1 million individual plants (Pickart 2017, pers. comm.).

Ma-le’l North Subpopulation: This subpopulation resides directly south of the Lanphere Dunes on the Ma-le’l North Dunes Unit of the Refuge and comprises the northern end of the Ma-le’l Cooperative Management Area (CMA), the southern portion of which is cooperatively owned/managed by BLM (see *Ma-le’l South Subpopulation*, below). Nonnative plants (i.e., European beachgrass, annual grasses, iceplant, and yellow bush lupine) require continued control to maintain the open/sparse vegetative cover and adequate sunlight needs that beach layia relies on. The total subpopulation area is approximately 29 ac (11.7 ha) (Service 2017, unpublished data).

Ma-le’l South Subpopulation: Extending immediately south of the Ma-le’l North subpopulation, the Ma-le’l South subpopulation is approximately 48 ac (19.4 ha), had an estimate of approximately 2 million individuals in 2017, and is owned/managed by BLM. Restoration has produced positive results in favor of beach layia persistence, although periodic maintenance of nonnative, invasive plants is necessary (Wheeler 2017, pers. comm.) to ensure the open/sparse vegetative cover resource need that beach layia relies on. Additionally, the best available data indicate this subpopulation is less abundant during drought years (2012–2015), followed by a positive spike in abundance following a winter of substantial rainfall (Wheeler 2017, pers. comm.) (see also figure 16 in the SSA report). The results of this subpopulation’s monitoring (i.e., that beach layia is less abundant during

drought years and more abundant following winters with heavy rainfall) are likely representative of the species across its entire range, based on the best available data to date regarding the species ecology and life history characteristics.

Manila North Subpopulation: This subpopulation encompasses two areas within close proximity to each other on lands owned/managed by the Manila Community Services District (CSD) and the nonprofit organization known as Friends of the Dunes. The total estimated subpopulation (both areas) was approximately 1.4 million individuals in 2017 and occupies approximately 82 ac (33 ha). Efforts have been made to remove nonnative, invasive species, but the efforts have not been consistent and many areas have been re-invaded. Active management is needed to ensure the open/sparse vegetative cover and adequate sunlight needs that beach layia relies on are available.

Manila South Subpopulation: This subpopulation is immediately south of the north population but resides on private property, encompassing approximately 47 ac (19 ha) as reported most recently in 2017 (Service 2017, unpublished data). The area is dominated with nonnative, invasive European beachgrass, iceplant, and annual grasses. Abundance and trend information, and adequacy of resource needs—beyond the visible reduction of area of sparse vegetative cover—are unknown.

Samoa/Eureka Dunes Subpopulation: This subpopulation is the southern extent/limit of the North Spit (Humboldt Bay) population, encompassing approximately 49 ac (20 ha) on lands owned/managed by both BLM and the City of Eureka and was estimated to include over 6 million individuals in 2017. The BLM lands occupied by the species are managed to provide both an Endangered Species Protection Area and an open OHV use area. The remainder of the City's occupied habitat includes an additional OHV use area, an industrial zoned area containing an operational airport facility, and an 84-ac (34-ha) parcel under conservation easement known as the Eureka Dunes Protected Area held by the Center for Natural Lands Management. Some of this subpopulation has been restored; however, nonnative, invasive species continue to envelop open areas where beach layia plants occur. Some monitoring data recently available indicate the protected areas harbor a higher density of beach layia compared to the OHV area, including increased

density of beach layia over the past 2 years, which correlates with increased precipitation over this same time frame (BLM 2016b). Similar to the monitoring results discussed in the Ma-le'l South Subpopulation, above, the results of this subpopulation's monitoring (*i.e.*, beach layia occurring at higher densities in the restored, protected areas compared to heavily impacted OHV areas, and high densities of beach layia plants correlating with years that have heavy annual rainfall) are likely representative of the species across its entire range, based on the best available data to date regarding the species' ecology and life-history characteristics.

Elk River Population

This population is owned and managed by the City of Eureka on the east shore of Humboldt Bay at the mouth of Elk River (see figure 8 in the SSA report). The spit is approximately 1.2 mi (1.9 km) long by up to 0.1 mi (0.16 km) wide, and beach layia occupies approximately 15 ac (6 ha) and was estimated to include 468,000 individuals in 2017 (Service 2017, unpublished data). Trend information is not available, although a recent survey in 2017 indicates the area is dominated by nonnative, invasive European beachgrass (Goldsmith 2017, pers. obs.).

South Spit Humboldt Bay Population

The 5-mi (8-km) stretch of dune that supports beach layia extends south from Humboldt Bay's entrance to the base of Table Bluff (see Figure 8 in the SSA report). The majority of this population is owned by the California Department of Fish and Wildlife (CDFW) as the Mike Thompson Wildlife Area, and the remainder is owned by BLM, which also manages the entire population (BLM 2014b, p. 3). The best available information suggests this population has increased in size since 2003, currently encompassing 83 ac (34 ha) with a population estimate of approximately 6 million plants (Service 2017, unpublished data). The steady increase in occupied beach layia habitat over time is due to the continued restoration effort to remove nonnative, invasive European beachgrass and iceplant (BLM 2014b, p. 7; Wheeler 2017, pers. comm.). Additionally, monitoring data available from two plots established in 2008 indicate increased density of beach layia following restoration, decreased density during recent drought years, and a subsequent increased density with high levels of annual precipitation (BLM 2014b, p. 15). These monitoring data suggest that beach layia density increases dramatically following restoration, that density settles to a more

moderate level as native plants fill in the previously invaded habitat, and that density is also strongly correlated to rainfall.

North Spit Eel River Population

Located immediately south of the South Spit Humboldt Bay Population, this population encompasses 37 ac (15 ha) of conserved lands within the CDFW's Eel River Wildlife Area and was estimated to include 4.7 million individuals in 2017 (Service 2017, unpublished data). The area is dominated by nonnative, invasive species including European beachgrass, iceplant, yellow bush lupine, and annual grasses. Trend information and adequacy of resource needs—beyond the visible reduction of area of sparse vegetative cover—are unknown.

South Spit Eel River Population

On the south side of the Eel River mouth, this population occurs on an area owned and managed by the Wildlands Conservancy, encompassing approximately 1.5 ac (0.6 ha) of occupied beach layia habitat and 11,307 plants as recorded in 2017 (Service 2017, unpublished data). It is likely that beach layia occurs in other areas of the property, although additional survey data do not yet exist. The area harbors nonnative, invasive European beachgrass that is reducing the availability of open sandy areas for beach layia to persist.

McNutt Gulch Population

This population was discovered in 1987, on private property near the mouth of McNutt Gulch. Varied numbers of plants have been recorded, ranging from 200 to 500 plants (CNDDB 2017; Imper 2018, pers. comm.), although a complete survey has not yet occurred. The occupied area is estimated to be less than 1 ac (0.4 ha) (Imper 2018, pers. comm.). A comparison of current and historical aerial photos indicate encroachment of European beachgrass. At this time, there is no beach layia trend information available.

Mouth of Mattole River Population

This is the southern extent of the known beach layia populations within Humboldt County. This population occupies approximately 27 ac (11 ha) within part of the King Range National Conservation Area and was estimated to include 3.1 million individuals in 2017 (Hassett 2017, pers. comm.). The area is owned and managed by BLM and is located 35 mi (56 km) south of the entrance to Humboldt Bay. Monitoring data available from 2017 indicate this

population had a spike in abundance that year compared to the previous year (estimated to be 725,000 individuals) that correlates to an increase in precipitation (Hassett 2017, pers. comm.).

Point Reyes Population

The next known population of beach layia to the south is located in Marin County, 200 mi (322 km) south of Humboldt Bay, in the dunes between Kehoe Beach Dunes and the Point Reyes lighthouse at Point Reyes (Service 1998, p. 44; figure 11 in the SSA report). This large dune system contains approximately 146 ac (59 ha) of dunes occupied by beach layia within 14 geographically concentrated areas, based on mapping conducted since 2001 (Point Reyes 2010, unpaginated). However, some of those areas were no longer occupied in 2017 (Goldsmith 2017, pers. obs.). The population was estimated to be 2.7 million in 2017 though varying levels of survey intensity over the years hamper our ability to track population trends (Parsons 2017, pers. comm.). However, sampling conducted from 2015–2017 in the Abbots Lagoon area, which includes recently restored areas, estimate increasing abundance (Parsons 2017, pers. comm.), which also correlates with an increase in precipitation. Restoration is ongoing and includes removal of nonnative, invasive European beachgrass and iceplant, which occur at various densities throughout the 14 subpopulations (Parsons 2017, pers. comm.).

Asilomar State Beach Population

The northern-most extant population in Monterey County was previously thought to be extirpated but was rediscovered in 1990 (Service 1998, p. 44). Since the time of the first survey effort in 1994, in which 192 plants were found, subsequent survey efforts found the abundance to remain relatively static within the same geographical footprint (Service 2011, p. 22; Gray 2017, pers. comm.). Most recently in 2017, the occupied beach layia habitat consisted of a sparse layer of native dune mat vegetation with no presence of nonnative, invasive species (Dorrell-Canepa 2017, pers. comm.). A total of 1,541 plants were counted within 0.17 ac (688 m²) (Gray 2017, pers. comm.). This 2017 count is the highest on record for this population, possibly correlated with the high amount of rainfall during the germination period. This population appears to be stable given its consistent year-to-year presence and relative protection from threats.

Indian Village Dunes Population

The second of three populations in Monterey County, the Indian Village Dunes population occurs on restored dune habitat owned by the Pebble Beach Company, most recently (2017) estimated at 1,200 plants on 0.55 ac (0.2 ha) (Dorrell-Canepa 2017, pers. comm.). Trends on distribution and abundance are not available, beyond one additional 2009 survey result of 1,783 plants over the same size acreage. This area is preserved through a conservation easement, and restoration activities have occurred and the habitat consists of sparse native vegetation.

Signal Hill Dunes Population

This southern-most population within Monterey County is located less than 1 mi (1.6 km) south of the Indian Village Dunes population and is also owned by Pebble Beach Company. No recent survey information exists. The best available information is from a 2001 survey effort indicating plants occurring in five semi-isolated areas (Zander Associates 2001, p. 7), likely encompassing less than 1 ac (0.4 ha). No information is known regarding adequacy of the area to meet the species' resource needs.

Vandenberg AFB Population

The southern-most population of beach layia occurs on Vandenberg AFB in Santa Barbara County, separated by a distance of approximately 235 mi (378 km) from the Signal Hill Dunes population. This area receives less annual rainfall than the Central and North Coast Ecoregions (*i.e.*, 14 in (36 cm) as compared to 20 in (51 cm) and 38 in (96 cm), respectively) (NOAA 2017). In both 2012 and 2016, a census of all known occupied habitat was conducted and 2,397 and 1,855 plants were counted, respectively. Most recently, in 2017, a total of 5,069 plants were counted (Schneider and Calloway 2017, p. 6). Due to varying levels of survey effort, there is no beach layia population trend information for this entire population, although the number of beach layia within a restoration area on the south side of the AFB demonstrates wide fluctuations in population size from year to year, which is often correlated to the amount of rainfall (see table 4 in the SSA report). Although restoration of beach layia habitat on Vandenberg AFB has occurred and is expected to continue into the future, it is highly stabilized due to the presence of nonnative, invasive species, including iceplant, European beachgrass, and veldt grass (*Ehrharta erecta*) (Schneider and

Calloway 2017, p. 14), thus reducing the open sandy areas that beach layia relies on.

Summary of Factors Affecting Beach Layia

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. 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.

In our determination, we correlate the threats acting on the species to the factors in section 4(a)(1) of the Act. We summarize the SSA for beach layia (Service 2018, entire) below. Determining whether the status of a species has improved to the point that it can be downlisted (*i.e.*, reclassified from endangered to threatened) or delisted (*i.e.*, removed from listed status) requires consideration of whether the species meets the definition of either endangered species or threatened species contained in the Act. For species that are already listed as endangered species or threatened species, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act’s protections.

As stated previously, at the time of listing (57 FR 27848; June 22, 1992), we determined that human-induced disturbances (particularly OHV activity, but also other disturbances from agriculture, pedestrians, development, etc.) were significant threats to beach layia, resulting in ongoing negative population or rangewide impacts; thus, we determined that the best available information indicated that the species was in danger of extinction throughout all of its range. Since that time, these activities have been significantly reduced, especially OHV activity, with records of the species subsequently demonstrating positive responses in abundance. Additionally, significant areas have been set aside, including

preserves, conservation areas, and conservation easements.

This current analysis considers the beneficial influences on beach layia, as well as the potential risk factors (*i.e.*, threats) that are either remaining or new and could be affecting beach layia now or in the future. In this proposed rule, we will discuss in detail only those factors that could meaningfully impact the status of the species. The primary risk factors affecting beach layia are the present and threatened modification or destruction of its habitat from overstabilization/competition with invasive species (Factor A from the Act), modification of its habitat from changing climate conditions (Factor E), modification of its habitat from human-influenced erosion/high level of disturbance (*e.g.*, recreation) (Factor A), and modification of its habitat from vertical land movement/shoreline erosion (*i.e.*, varying levels of uplift and subsidence, as described below) (Factor A). Additional threats to the species include development (Factor A) and herbivory/disease (Factor C); however, our analysis shows that while these threats may be impacting individual beach layia plants, they are not having species-wide impacts. For a full description of all identified threats, refer to chapter 8 of the SSA report (Service 2018, pp. 38–48).

Overstabilization/Competition With Invasive Species

Areas described as overstabilized in this document (and discussed in detail in section 8.2.1 of the SSA report (Service 2018, pp. 41–43)) have high vegetation cover and restricted sand movement either due to presence of nonnative, invasive species or presence of species (native or nonnative) that move in after an area is stabilized by invasive species. Overstabilization caused by invasive species, as defined here, is a different ecological process from natural succession in which native vegetation changes over time from the semi-stable dune mat community to more stabilized communities. Both overstabilization and natural succession have a negative impact on the abundance of beach layia because the species requires open sand to colonize an area (see *Ecology, Habitat, and Resource Needs of Beach Layia*, above). At this time, the best available information indicates that large portions of the range of beach layia have been made unsuitable by overstabilization and competition with both native and nonnative invasive species (Service 2017 pp. 41–43). However, dune systems that are naturally succeeding often still contain areas of semi-stable

dunes—although they may shift over time—that are suitable for beach layia. One population—the Freshwater Lagoon Spit—is the only beach layia population that is currently impacted by stabilization caused by native species, *i.e.*, red fescue (Samuels 2017, pers. comm.). Although no measures are in place to address the stabilization effects, there is an experimental project underway to remove native species in order to create more suitable habitat for beach layia (Samuels 2017, pers. comm.).

The remainder of beach layia’s range is subject to past introduction and invasion of its habitat by a variety of nonnative, invasive plant species (Service 1998, p. 45), which is one reason why the species was listed as an endangered species (57 FR 27848; June 22, 1992). These nonnative species adversely affect the long-term viability of coastal dune plants, including the entire distribution of beach layia (with the exception of the Freshwater Lagoon Spit population, as described above), through either direct competition for space (56 FR 12323; March 22, 1991); stabilization of the dunes (56 FR 12318; March 22, 1991); and in some cases, enrichment of the soils, which then stimulate invasion by other aggressive species (Maron and Connors 1996, p. 309; Pickart *et al.* 1998, pp. 59–68). Nonnative, invasive species are currently present at all populations throughout the species’ range, although to a lesser degree at the Lanphere Dunes, Ma-le’l North, and Ma-le’l South subpopulations; the Mouth of Mattole River population; and Asilomar State Beach and Indian Village Dunes populations due to restoration activities. The most common invasive species (European beachgrass, iceplant, yellow bush lupine, and rigput brome) in dune systems throughout the range of beach layia are described in section 8.2.1.1 of the SSA report (Service 2018, pp. 42–43). The high level of invasion throughout the range of beach layia suggests these taxa will continue to invade beach layia habitat (*i.e.*, invasive plants occur at varying densities within and adjacent to all extant populations), necessitating routine and long-term management actions. Many of the invasive plants have been mapped within the various dune systems occupied by beach layia (Johns 2009, p. 24; Point Reyes 2015, p. i; Mantech SRS Technologies 2018, p. 1), and there have been efforts for their removal or control (Service 2011, p. 10; Point Reyes 2015, p. 105; Mantech SRS Technologies 2018, p. 1). However, much potentially suitable habitat for beach layia remains

to be restored, as identified in the 1992 recovery plan (*i.e.*, the portion of the species' range where the majority of occurrences are including the Mouth of the Mad River, the greater part of the North and South Spits of Humboldt Bay, Elk River Spit, the North and South Spits of the Eel River, McNutt Gulch, as well as Point Reyes, Signal Hill Dunes, and Vandenberg AFB (recovery criterion 2, see section 11.0)), in addition to routine maintenance to control this threat into the future.

Overall, overstabilization and competition with native or nonnative, invasive species are reducing the availability of sandy soils with sparse vegetative cover, causing beach layia throughout its range to compete for open sandy space, sunlight, and rainfall during its winter germination period. Efforts at some locations to remove invasive species (such as, but not limited to, European beachgrass, iceplant, yellow bush lupine, and ripgut brome) that are adversely affecting resources needed by beach layia are reducing these negative influences and thus have improved the species' current resiliency at many populations. However, the ability of land managers to continue manage the ongoing threat of invasive species into the future is uncertain.

Changing Climate Conditions

Changes in weather patterns have been observed in recent years and are predicted to continue (Frankson *et al.* 2017, p. 1). This can include extreme events such as multi-year droughts or heavy rain events (Frankson *et al.* 2017, pp. 2–5). All of these have the potential to remove, reduce, and degrade habitat, as well as remove individual plants, reduce germination and survival rates, and reduce fecundity. The best available scientific and commercial information at this time does not indicate how historical changes in climate may have affected beach layia, although recent drought conditions have had a negative impact on population size (BLM 2016a, p. 6; ManTech SRS Technologies 2016, p. 29).

The best available information indicates that recent drought conditions (2012–2016) negatively influenced the abundance of beach layia (*e.g.*, lack of rainfall for germination, reduced fecundity, desiccation during dry periods in the growing season) across the species' range (BLM 2016a, p. 6; BLM 2014b, p. 16; Pickart 2017, pers. comm.; Gray 2017, pers. comm.; ManTech SRS Technologies 2018, p. 9). A subsequent increase in abundance was seen in 2017, corresponding with the increase in rainfall at the end of this

multi-year drought period, indicating the seedbank for the species has some ability to withstand multi-year droughts. However, at this point in time the full longevity of the seedbank is unknown; therefore, it is impossible to predict whether the species could withstand even longer drought periods or whether drought conditions could reach a point at which the seedbank would no longer be viable. All that can be reasonably concluded from the available information is that multi-year droughts have a negative effect on beach layia abundance, reducing above-ground vegetative growth, and that the seedbank for the species appears to be able to withstand at least four years of consecutive drought and then regenerate new vegetative growth once more normal rainfall patterns return (noting a tendency for the species to experience a spike in abundance following a drought).

The Intergovernmental Panel on climate change states it is likely that the intensity and duration of droughts will increase on a regional to global scale (IPCC 2014, p. 53). We used the California Climate and Hydrology Change Graphs, a graphing tool that presents climate and hydrology data from the California Basin Characterization Model (BCM) dataset (Flint *et al.* 2013, entire), to analyze the potential impact of drought on beach layia in the future. Four future climate scenarios demonstrate a range of precipitation and temperatures projected by the 18 scenarios available from the BCM. We chose to use the climatic water deficit calculations because they take into account changes in air temperature, solar radiation, and evapotranspiration, and can be used as an estimate of drought stress on plants (Stephenson 1998, p. 857). There are large uncertainties with respect to future precipitation levels (some scenarios predict a hot dry future while others predict a hot wet future). While climatic water deficit magnitudes vary across the models, the trends are consistent in that all projections indicate increasing values. Climatic water deficit values, both historical (1931–2010) and projected (2021–2050), are higher in watersheds in the Central and South Coast Ecoregions. The South Coast Ecoregion has the highest values and is therefore considered to be the most vulnerable to stress caused by drought, followed by the Central Coast Ecoregion, and then the Point Reyes population at the southern end of the North Coast Ecoregion. The three watersheds in Humboldt County (which encompass all of the North Coast Ecoregion

populations except Point Reyes) are least likely to be stressed by drought, both currently and into the future, but the trend in climatic water deficit is still increasing. See section 8.2.2.1 of the SSA report for additional discussion regarding impacts associated with drought.

While no definitive conclusions can be drawn about the potential for drought alone to result in permanent loss of beach layia populations, a compounding factor with changing climate conditions is the relationship to invasive plant species. Many of the invasive species that negatively affect beach layia or its habitat, such as European beachgrass and iceplant, are drought tolerant (Hertling and Lubke 2000, pp. 522–524; Hilton *et al.* 2005, pp. 175–185, Earnshaw *et al.* 1987, pp. 421–432). During a multi-year drought, it is possible that invasive species could persist and spread into areas where beach layia declined, resulting in less open space habitat for germination of beach layia when a sufficient amount of rainfall returns (assuming the seedbank survives).

The high level of abundance of beach layia in 2017 suggests that the potential for invasive species to take over habitat and exclude beach layia regeneration is not a significant threat, at least for drought periods up to four years in duration. However, the likelihood of the increased duration and intensity of drought into the future increases the potential for this outcome, which could be particularly problematic for those populations in the Central and South Coast Ecoregions.

In addition to drought, rising sea levels caused by changing climate conditions can lead to removal or reduction of habitat, and the removal of individual plants, seedbanks, and whole populations. However, an analysis conducted using RCP 8.5 and local sea level rise projections for 2050 based on the methodology developed by Kopp *et al.* (2014, pp. 384–393) as presented in Rising Seas in California (Griggs 2017, entire) suggests that rising seas are not likely to significantly influence beach layia into the foreseeable future, and it is unknown how changes in sea levels may have affected the species in the past. Likewise, projections for the lower emission scenario indicate that rising seas under RCP 4.5 are not likely to negatively influence beach layia (Griggs 2017, entire). For more information on the analysis conducted on the effects of sea level rise, please refer to section 10.3.2 of the SSA (Service 2017 pp. 52–58)

Erosion/High Level of Disturbance

Erosion of soil in a dune system can be caused by many factors, and any form of erosion or heavy soil disturbance can result in the removal of beach layia habitat, individual plants, and seedbank. Erosion and disturbance of beach layia habitat discussed in this document is associated with high levels of disturbance caused by pedestrian, equestrian, OHV, and grazing activity.

First, the best available information suggests that trampling from both pedestrian and equestrian activities occur at insignificant levels at most populations throughout beach layia's range, with the possible exception of the Signal Hill Dunes population on the Monterey Peninsula (Service 2011, p. 11), although that current level of impact is unknown. Monitoring data and anecdotal evidence consistently indicate a strong preference by beach layia for moderately disturbed habitat adjacent to roads and trails (whether pedestrian or equestrian) in what otherwise would be unoccupied habitat (Service 2011, p. 11). Dispersed equestrian use has been allowed at the South Spit Humboldt Bay population since BLM began management of the area in 2002, and beach layia abundance has remained high, suggesting that dispersed equestrian use, at least where large areas of occupied habitat are concerned, is compatible with large populations (Wheeler 2017, pers. comm.).

Second, OHV activity within beach layia habitat across the species' range is significantly reduced since the time of listing. Most occupied habitat is restricted from OHV use with the exception of five populations in Humboldt County. Monitoring data from one recent study confirm lower beach layia abundance within riding areas as compared to preserved areas that are closed to OHV use and managed to reduce threats to the species (BLM 2016a; BLM 2016b; Hassett 2017, pers. comm.; see also figure 17 in the SSA report). Additionally, within the OHV riding area, beach layia is restricted to the edges of trails, and the remainder of the habitat is overstabilized and dominated by invasive vegetation. It is possible that the higher beach layia abundance in the protected areas of the study could have more to do with invasive species management than eliminating the direct impacts of OHV use (Wheeler 2017, pers. comm.).

Finally, livestock trampling was identified as a threat when beach layia was listed (57 FR 27848). Livestock trampling previously occurred at the Mouth of Mattole River population, but

fencing was replaced in 1997, thereby eliminating this threat (BLM 2014a, p. 5). Additionally, livestock were removed from the South Spit Eel River population that occurs on the Wildlands Conservancy Preserve (Allee 2018, pers. comm.). At this time, the only populations that are exposed to livestock are the McNutt Gulch population (Imper 2018, pers. comm.) and some portions of the Point Reyes population (Parsons 2018, pers. comm.). Observations made at Point Reyes suggest that livestock trampling is negatively impacting portions of the population there (Goldsmith 2018, personal observation). The current status of the McNutt Gulch population is unknown.

Overall, the best available scientific and commercial information suggests that human-induced disturbances are not resulting in significant, negative, population-wide or rangewide impacts given most beach layia habitat is under some level of protection and responds well to slight disturbance. However, some risk to the species' viability in the North Coast Ecoregion populations remains for some populations in the form of trampling or crushing of individuals plants.

Vertical Land Movement/Shoreline Erosion

Uplift or subduction (*i.e.*, the geological process that occurs at convergent boundaries of tectonic plates where one plate moves under another and is forced to sink due to gravity into the mantle) both during and between seismic events can affect whether a beach/shoreline is prograding (*i.e.*, advancing toward the sea as a result of the accumulation of waterborne sediment) or eroding. Vertical land movement (VLM) is site specific and is influenced by a number of factors. A study conducted in the Humboldt Bay area indicates that direction and magnitude differ depending on location, although most areas around the bay, including areas near beach layia habitat, are subsiding (Patton *et al.* 2017, pp. 26–27). Removal or reduction of both habitat and individual plants can be caused by sea level rise associated with subduction while uplift may counterbalance those effects. Sudden movements associated with earthquakes can cause tsunamis, which have the potential to remove habitat and whole populations in one event.

As with many ecosystems, dunes often undergo periods of cyclic stabilization and rejuvenation (Pickart and Sawyer 1998, p. 4). Rejuvenation events can be the result of changes in relative sea level, which in turn are

attributed, at least in the past, to tectonic activity, including tsunamis (such as the following, as cited in Pickart and Sawyer 1998: Vick 1988, Pacific Watershed Associates 1991, Clarke and Carver 1992, and Komar and Shih 1993). Both uplift and subsidence can theoretically trigger reactivation of dunes, with the former potentially building or expanding dunes through increased sediment supply, while the latter can destroy dunes through increased wave action or limit the expansion of new dunes (Pickart and Sawyer 1998, p. 4). The southern end of the North Spit Humboldt Bay population and the South Spit Eel River population are particularly vulnerable to shoreline erosion (McDonald 2017, pp. 10–13).

The San Andreas Fault, which runs along the eastern edge of Point Reyes and runs parallel to the Monterey Peninsula, regularly experiences plate movements. A vulnerability assessment conducted for Point Reyes indicates that the portion of shoreline where beach layia occurs has a high to very high vulnerability index (Pendleton *et al.* 2005, pp. 3, 15), suggesting that this population is subject to removal of occupied habitat caused by shoreline erosion. Similarly, the Monterey coastline where beach layia occurs has been shaped by varying levels of uplift and subsidence (Revell Coastal 2016, p. 2–1). The dunes at Asilomar are less vulnerable to erosion compared to those on the northern portion of the peninsula (EMC Planning Group 2015, figure 5). The best available information does not suggest any current or historical VLM or shoreline erosion for the Monterey Peninsula; thus, areas where beach layia occur appear relatively safe. No VLM/shoreline erosion information is available for Vandenberg AFB. While some populations are more at risk than others to lose habitat via VLM based on historical data, coastal dune habitat will always be threatened by the potential loss of large expanses of habitat caused by subduction events or tsunami.

Current Condition Summary

While all of the threats discussed above have the potential to negatively influence the resiliency of beach layia populations, the threat that currently has the greatest negative impact on populations or the species rangewide is overstabilization/competition with invasive species. This threat reduces abundance of beach layia more than any other and has the potential to have significant negative impacts to populations across the range of the species by reducing the amount of open sandy areas with sparse vegetation that

it needs. Although habitat has been restored for some populations, the threat of invasive species expanding their presence throughout the species' range is always present, especially since most restored sites are near currently invaded areas, and has the potential to increase if changing climate conditions result in longer duration and higher intensity multi-year droughts. Efforts to remove nonnative or native invasive species and reverse the effects of overabundance are ongoing throughout the species' range (Martinez *et al.* 2013, p. 159; BLM 2014b, p. 17; ManTech SRS Technologies 2016, p. 1; California Department of Parks and Recreation (CDPR) 2004, p. 3–14). However, these efforts are time consuming and costly. There are current management plans that include restoration for some populations, however, many populations have no plans for restoration and dedicated funding into the future is only available for the Asilomar State Beach population. Thus, this threat is not considered to be causing a significant negative influence across the entire range of beach layia at this time, but is reasonably likely to in the foreseeable future.

Uncertainties regarding the species' ecology and current impacts (or level of impacts) to beach layia or its habitat include (but are not limited to): Defined timelines for implementation of restoration and ongoing control of nonnative, invasive species; limiting factors for the populations in Monterey County; seedbank longevity; and the optimal disturbance regime to maximize recovery efforts (see also section 9.1.2 in the SSA report (Service 2018, p. 50)).

Potential Future Condition Summary

For the purpose of this proposed rule, we define viability as the ability of the species to sustain populations in the wild over time. This discussion explains how the stressors associated with overabundance/competition with invasive species, changing climate conditions, erosion/high level of disturbance (*e.g.*, recreation), and vertical land movement/shoreline erosion will influence resiliency, redundancy, and representation for beach layia throughout its current known range using the most likely plausible scenario. The future timeframes evaluated include a range of times that cover a variety of management plans that are expected to last the next 10 to 20 years and predictions for local sea level rise in the future through the year 2050. Thus, foreseeable future for this analysis is a range from approximately 15 to 30 years from current.

Suitable occupied and unoccupied habitat is limited to coastal dune systems that are subject to modification or destruction by overabundance/competition with nonnative and native invasive species, changing climate conditions (which can result in drought and sea level rise), erosion from various disturbance activities (*e.g.*, recreation), and VLM/shoreline erosion (see section 6.2 in the SSA report (Service 2018, pp. 14–24)). Significant habitat modification in any portion of beach layia's range could lead to reduced population size, growth rate, and habitat quality for the affected population(s), thus resulting in a higher risk level for the species' viability into the future. Although the threats described above are generally spread throughout the species' range, the best available data indicate that the most vulnerable populations, given current and potential future impacts to availability of sparsely vegetated native dune mat habitat subject to periodic disturbance during the dormant season, include:

- *North Coast Ecoregion*—Freshwater Lagoon Spit, portions of North Spit Humboldt Bay (including the Mad River Beach, Bair/Woll, Manila South, and Samoa/Eureka Dunes subpopulations), portions of South Spit Humboldt Bay, Elk River, North Spit Eel River, South Spit Eel River, McNutt Gulch, and unrestored portions of Point Reyes;
- *Central Coast Ecoregion*—Signal Hill Dunes; and
- *South Coast Ecoregion*—Vandenberg AFB.

This includes two of the three largest population centers in the North Coast Ecoregion, of which the North Spit Humboldt Bay harbors greater than 75 percent of the species' abundance rangewide (see table, above). Depending on the severity of the impacts to the resources needed by beach layia, populations or portions thereof could be lost in the future.

Populations in areas where habitat is limited or unsuitable in the future (see section 8.1 in the SSA report (Service 2018, pp. 39–41)) are likely to be more susceptible to threats that continue or worsen in the future, potentially resulting in reduced population(s) size and growth rate. Loss of habitat caused by invasion of nonnative, invasive species is the most prominent negative influence on beach layia into the future.

The populations in the Central and South Coast Ecoregions are at the greatest at risk of declines in abundance in the future based on their small size, limited distribution and expected continued threats in the future, particularly competition with nonnative, invasive species and drought

stress. No projected drought trends are available; however, extreme events, including multi-year droughts, are expected to increase in likelihood into the future (Frankson *et al.* 2017, pp. 2–5) and an analysis on climatic water deficit shows an increasing trend throughout the range of the species into the future, particularly those in the Central and South Coast Ecoregions (See section 8.2.2.1 of the SSA report).

Overall, it is likely that the most significant threat to beach layia's resiliency in the future will be continued overabundance/competition with invasive species and, to a lesser extent, changing climate conditions, erosion/high levels of disturbance and VLM/shoreline erosion. These threats are likely to result in a reduction in abundance of beach layia throughout its range stemming from removal, reduction, and degradation of habitat, and reduced abundance, such as from reduced germination, fecundity, and survival rates.

Many populations are likely to see a reduction in abundance of beach layia because there are no existing management activities or no management plans that provide long-term assurances that management activities will continue into the future to improve existing suboptimal habitat conditions (*e.g.*, invasive species), especially if the species is delisted. Very few populations have been managed in such a way that the natural processes that create habitat for the species are able to operate unhindered (*i.e.* Lanphere and Ma-le'l). The remaining populations are dependent on continued management into the future to improve habitat conditions.

The low abundance and limited distribution of the species in the Central and South Coast Ecoregions make those populations particularly vulnerable to stochastic events, including, but not limited to, drought. It is likely that the intensity and duration of droughts will increase on a regional to global scale (IPCC 2014, p. 53). The high likelihood of increased intensity and duration of droughts in California (Frankson *et al.* 2017, pp. 2–5) is expected to negatively influence beach layia populations throughout the species' range because rain is required for germination, but particularly in the Central and South Coast Ecoregions due to high projections of climatic water deficit in those watersheds. A compounding factor in the analysis of drought effects on beach layia is that two of the most common nonnative, invasive species that compete for habitat with beach layia—European beachgrass and iceplant—are both drought tolerant (Hertling and

Lubke 2000, pp. 522–524; Lechuga-Lago *et al.* 2016, pp. 8–9).

Resiliency, Redundancy, and Representation

To characterize beach layia's viability and demographic risks, we consider the concepts of resiliency, redundancy, and representation, and how the threats may negatively impact the resource needs that it relies on for survival and reproduction. Taking into account the impacts of the most significant threats and the potential for cumulative impacts to the resources that the species needs, our projections for future conditions are that beach layia's ability to withstand and bounce back from stochastic events (resiliency) is currently high and likely to remain so into the future. This resiliency is demonstrated by the increased abundance at most populations during a heavy rainfall year (*e.g.*, 2017; table 2 in the SSA report (Service 2018, pp. 22–24)) that followed four years of drought conditions. However, this rebound in 2017 did not occur throughout all of the species' range, including at some of the smaller populations.

Of greater concern for beach layia's viability into the future is that the populations in the Central and South Coast Ecoregions are significantly smaller than the populations in the North Coast Ecoregion, thus decreasing the species' representation and redundancy in a large proportion of the species' range if these populations are lost in the future. The smaller abundance and acreage of these populations compared to the populations in the North Coast Ecoregion increases the chances of population loss in the foreseeable future, especially given the likelihood that:

- (1) Overstabilization/competition with invasive species is not adequately being addressed (*e.g.*, lack of staff and funding for invasive species control at some locations).
- (2) Drought conditions are expected to worsen (continued multi-year droughts that result in reduced annual precipitation levels) across the species' range, but particularly in the Central and South Coast Ecoregions.
- (3) Drought conditions can possibly benefit the abundance and spread of drought-tolerant invasive plants that are already present and adversely impacting the resources that beach layia relies on.

See section 10.3 in the SSA report (Service 2018, pp. 52–59) for additional analysis and discussion of factors influencing the viability of beach layia in the future. Taking into account the impacts of the most significant threats

and the potential for cumulative impacts to the resource needs, our projections for future conditions are that beach layia's ability to withstand and bounce back from stochastic events (resiliency) is currently high and likely to remain so into the future. Additionally, multiple populations currently spread across a wide geographic range suggest high redundancy and representation. However, at this time, the populations in the Central and South Coast Ecoregions have lower abundance than the North Coast Ecoregion populations. Given the lower abundance compared to the rest of the species range and the continued threats into the foreseeable future, the species overall ability to maintain adequate representation and redundancy into the future is low.

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: “[O]bjective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.” However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is an endangered species or threatened species (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made “solely on the basis of the best scientific and commercial data available.” Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the species' status under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List

of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan. Below, we summarize the recovery plan goals and discuss progress toward meeting the recovery objectives and how they inform our analysis of the species' status and the stressors affecting it.

In 1998, we finalized the Seven Coastal Plants and the Myrtle's Silverspot Butterfly Recovery Plan, which included recovery objectives for beach layia (recovery plan; Service 1998, pp. 43–48). All of the downlisting criteria and a portion of the delisting criteria included in the recovery plan (Service 1998) applied to the entire suite of dune plant species covered by the plan. As such, some interpretation of those criteria may be warranted to account for the specific life history or other circumstances of the species in question. Therefore, we have based our analysis on the intent of the criteria as they relate to the five factor analysis for beach layia. Based on our review of the recovery plan and the information obtained from the various management activities, surveys, and research that have occurred to date, we conclude that the status of beach layia is improved throughout its range as a result of significant protections to preserve or conserve habitat, along with land use decisions and management activities implemented by many landowners undertaken since the time of listing. See appendix A in the SSA report for a detailed account of existing regulatory mechanisms and voluntary conservation efforts (Service 2018, pp. 75–80). Our analysis indicates that the intent of the downlisting criteria has been met. Our summary analysis of the downlisting criteria follows:

Downlisting Criterion 1 (addresses Listing Factors A, D, and E): Habitat occupied by the species that is needed to allow delisting has been secured, with long-term commitments and, if possible, endowments to fund conservation of the native vegetation.

There has been significant improvement in the security of habitat occupied by beach layia since the recovery plan was prepared, including land acquisition by Federal agencies, State and local agencies, and nongovernmental organizations; adoption of local coastal plans under the California Coastal Act; and implementation of management plans that address the needs of the species. Of

the estimated 595 ac (240 ha) of dunes habitat currently occupied by beach layia, approximately 91 percent is owned by Federal and State governmental entities or other land owners with existing resource management direction precluding development within sensitive dunes habitat. Despite the fact that not all entities managing beach layia habitat have been able to demonstrate their ability to continue management into the future, especially if the species is delisted, due to the significant amount of occupied dune habitat that is now on protected lands (*i.e.*, long-term commitments of approximately 32 years, including resource management plans that contain a restoration component), and state and federal mandates to conserve the species as long as it remains listed, we conclude that this recovery criterion has been adequately met.

Downlisting Criterion 2 (in part, addresses Listing Factors A, D and E): Management measures are being implemented to address the threats of invasive species, pedestrians, and OHVs at some sites.

The Service, BLM, National Park Service (Redwood National Park, Point Reyes), and several other land managers in the northern portion of the range, and the CDPR, Department of Defense, and several other managers in the southern portion of the range have all instituted relevant management policies since the recovery plan was completed or since the species was listed. Those policies have reduced, and in many cases eliminated, the threats to beach layia posed by pedestrians and OHV activity, as well as reduced to a certain degree the threat of native and nonnative, invasive species. Because of the many management measures currently implemented across the range of beach layia to address the threats of pedestrians and OHVs, and the work conducted thus far to address the ongoing threat of invasive species, we conclude that this criterion has been adequately met.

Downlisting Criterion 3 (in part, addresses Listing Factor E): Monitoring reveals that management actions are successful in reducing threats of invasive, nonnative species.

Management actions over the past 12 years have reduced the threats from native and nonnative, invasive species, at least into the foreseeable future. Because of these successful invasive species management measures, we conclude that this criterion has been adequately met.

Downlisting Criterion 4 (in part, addresses Listing Factors A, D and E):

Additional restored habitat has been secured, with evidence of either natural or artificial long-term establishment of additional populations, and long-term commitments (and endowments where possible) to fund conservation of the native vegetation.

Commitments by land managers across beach layia's range, as described under Downlisting Criterion 1, above, have resulted in secured habitat (*i.e.*, protected from development although native or nonnative, invasive species continue to reduce the availability of sandy soils with sparse vegetative cover) in multiple geographic areas since the recovery plan was completed. These include several protected areas on Federal, State, and local public lands, as well as land acquisition and protection (*e.g.*, conservation easements) by nongovernmental organizations (protections are described in each population descriptions found in section 7.0 of the SSA report (Service 2018, pp. 25–38)). Additionally, restoration has been conducted with a commensurate response by beach layia (*e.g.*, the creation of an Endangered Species Protection Area within the Samoa/Eureka Subpopulation, North Spit Humboldt Bay, Point Reyes National Seashore, Vandenberg AFB). As a result, we conclude that this criterion has been adequately met.

The intent of the delisting criteria has not yet been met for beach layia. The overarching goal for delisting beach layia includes removal of substantially all of the nonnative, invasive plants on the dunes where it occurs and securing written assurance of long-term support for continued management of the dunes, and monitoring (Service 1998, pp. 92–93). The overarching goal is to restore natural processes that have been disrupted by the presence of nonnative, invasive species to dune systems so that beach layia and other native plants adapted to those environments can persist into the future.

Determination of Beach Layia 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 an endangered species or a threatened species. The Act defines “endangered species” as a species “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as a species “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

After evaluating threats to the species under the section 4(a)(1) factors, we examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2011 5-year review (Service 2011, entire), additional information that became available since the time our 2011 5-year review was completed, and other available published and unpublished information. We also consulted with species experts and land management staff who are actively managing for the conservation of beach layia.

We examined the following threats that may be affecting beach layia: Development (Factor A), herbivory/disease (Factor C), overutilization/competition with invasive species (Factor A), changing climate conditions (Factor E), erosion/high level of disturbance (*e.g.*, recreation) (Factor A), and vertical land movement/shoreline erosion (Factor A). We found no threats associated with overutilization for commercial, recreational, scientific, or educational purposes, such as (but not limited to) collection of plants for scientific research (Factor B). We also considered and discussed existing regulatory mechanisms (Factor D) and voluntary conservation efforts as they relate to the threats that may affect beach layia (summarized within each threat discussions within chapters 8 and 10, and detailed in appendix A, of the SSA report, pp. 75–80).

The most significant factors influencing the viability of beach layia populations at the time of listing were displacement by nonnative, invasive vegetation; recreational uses such as OHV activities and pedestrians; and urban development (June 22, 1992, 57 FR 27848; Service 1998, p. 45). Currently, our analysis indicates that the level of impacts to beach layia and its habitat that placed the species in danger of extinction in 1992 (*i.e.*, human-induced disturbances including OHV activity, agriculture, pedestrians, development, etc.) have substantially been reduced as a result of the

significant commitments made by landowners to conserve lands and institute restoration activities at multiple populations throughout the species' range. However, the extensive spread of nonnative, invasive vegetation throughout the species' range remains a significant negative influence on the viability of the species. Additionally, the ability of the majority of landowners to continue management of habitat for the species into the future is uncertain, particularly if the species were to be delisted.

At the time of the 5-year review (2011) and currently, we have become aware of the potential for anthropogenic climate change to affect all biota, including beach layia. Available information indicates that temperatures are increasing and annual rainfall is reduced during some years within beach layia's range, resulting in prolonged drought conditions that negatively influence beach layia abundance. Beach layia's response to these changes should be monitored into the future.

Of the factors identified above, overabundance/competition with invasive species (Factor A), changing climate conditions (Factor E), erosion/high level of disturbance (e.g., recreation) (Factor A), and vertical land movement/shoreline erosion (Factor A) are the most significant threats to the species currently or into the foreseeable future. After review and analysis of the best scientific and commercial information available regarding the threats as they relate to the five statutory factors, we find that this information does not indicate that these threats are affecting individual populations or the species as a whole across its range to the extent that they currently are of sufficient imminence, scope, or magnitude to rise to the level that beach layia is in danger of extinction throughout all of its range. However, our review of information indicates that, while the overall range of the species has slightly increased since the time of listing (i.e., discovery of the northernmost population—Freshwater Lagoon Spit), the anticipated trajectory of the identified threats into the foreseeable future is likely to result in a condition whereby the abundance and density of the species across the majority of its range (including the population stronghold areas in a portion of Humboldt County) are likely to be negatively impacted.

Specifically, the best available information indicates there is a likelihood of population- and rangewide-level impacts to beach layia abundance in the foreseeable future, despite beneficial management actions

at some of the populations at this time. Beach layia populations across the species' range are likely to be negatively influenced predominantly from overabundance/competition with invasive species, in conjunction with predicted drought conditions. Our analysis reveals that one or more threats continue to act on the species at the population level, likely contributing to low abundance in most years that do not experience substantial rainfall. Additionally, there is a lack of range expansion at some small populations (e.g., Asilomar State Beach, Indian Village Dunes, and Signal Hill Dunes populations), likely contributing to insufficient recruitment necessary for stable or, ideally, increasing populations. With respect to the remaining populations that are experiencing OHV and other recreation activities (noting this threat is substantially reduced with the exception of a few areas in the North Coast Ecoregion), the existing regulatory mechanisms are likely insufficient to manage the beach layia habitat specifically at the Signal Hill Dunes population. Overall, some disturbance appears compatible with large populations (Wheeler 2017, pers. comm.)

Thus, after assessing the best available information, we conclude that beach layia 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.

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 beach layia, 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 beach layia to warrant its classification as a threatened species throughout all of its range. We examined the following threats: Overabundance/competition with invasive species, changing climate conditions, erosion/high level of disturbance (e.g., recreation), and vertical land movement/shoreline erosion, including cumulative effects. While some of these threats currently exist throughout the range of the species (e.g., the presence of invasive species, recreational impacts), it is the anticipated future increase in overabundance/competition with invasives, exacerbated by climate change-influenced drought, that is driving the threatened status of the species.

The best scientific and commercial data available indicate that the time horizon on which this heightened threat to beach layia from drought-influenced overabundance/competition with invasive species, and beach layia's negative response to that heightened threat, is likely to occur is the foreseeable future. In addition, the best scientific and commercial data available do not indicate that this heightened threat is more immediate in any portions of the species' range. Therefore, we determine that the beach layia is not in danger of extinction now in any portion of its range, but 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).

Therefore, on the basis of the best available scientific and commercial information, we propose to reclassify beach layia as a threatened species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

Determination of Status

Our review of the best available scientific and commercial information indicates that beach layia meets the definition of a threatened species. Therefore, we propose to downlist beach layia from an endangered species to a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. 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 Alesa 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 beach layia 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 is necessary and advisable to provide for the conservation of the beach layia. As discussed in the Determination of Beach Layia Status section, the Service has concluded that beach layia is at risk of extinction within the foreseeable future primarily due to overstabilization/competition with invasive species and drought conditions, in addition to loss of habitat and plants at some locations from recreational disturbance and erosion (*e.g.*, shoreline erosion, vertical land movement). The provisions of this 4(d) rule would promote conservation of beach layia by making it unlawful to remove and reduce to possession beach layia from Federal land. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the beach layia. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the beach layia as a threatened species.

Provisions of the 4(d) Rule

This proposed 4(d) rule would provide for the conservation of beach layia by prohibiting the following activities, except as otherwise authorized or permitted: For any person subject to the jurisdiction of the United States to remove and reduce to possession beach layia 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 beach layia by prohibiting detrimental activities and allowing activities that would be beneficial to the species.

The proposed 4(d) rule only addresses Federal requirements under the Act and would not change any prohibitions provided for by State law. As explained above, the provisions included in this proposed 4(d) rule are necessary and advisable to provide for the conservation of beach layia. 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 beach layia. However, the consultation process may be further streamlined through planned programmatic consultations between Federal agencies and the Service for these activities. 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).

As discussed in the Determination of Beach Layia Status (above), several factors are affecting the status of beach layia. A range of activities have the potential to impact the beach layia, including: The loss of habitat and plants at some locations from recreational disturbance. Regulating these activities will help preserve the species’ remaining populations, 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 plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that “the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species.” That regulation also states, “The permit shall be governed by the provisions of this section unless a special rule applicable to the plan is provided in §§ 17.73 to

17.78.” We interpret that second sentence to mean that permits for threatened species are governed by the provisions of § 17.72 unless a special rule provides otherwise. We recently promulgated revisions to § 17.71 providing that § 17.71 will no longer apply to plants listed as threatened in the future. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or require that every special rule spell out any permitting provisions that apply to that species and special rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of § 17.72 unless a special rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings § 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states, “Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§ 17.40 to 17.48, of this part provides otherwise.” Under 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 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 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 Services 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 which 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, will be able to conduct activities designed to conserve beach layia that may result in otherwise prohibited activities without additional authorization.

III. 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:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) 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 this proposed rule, your comments should be as specific as possible. For example, you should tell us the names 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.

National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in

connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R8-ES-2018-0042, or upon request from the Assistant Field Supervisor, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and the Arcata Fish and Wildlife Office.

Lists 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 in paragraph (h) by revising the entry for “*Layia carnosa*” under FLOWERING 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				
*	*	*	*	*
<i>Layia carnosa</i>	Beach layia	Wherever found	T	57 FR 27848, 6/22/1992; [Federal Register citation when published as a final rule]; 50 CFR 17.73(b). ^{4d}
*	*	*	*	*

- 3. Revise § 17.73 to read as follows:
- § 17.73 Special rules—flowering plants.**
- (a) [Reserved]

- (b) *Layia carnosa* (beach layia).
- (1) *Prohibitions*. The following prohibitions that apply to endangered

plants also apply to *Layia carnosa* (beach layia). Except as provided under paragraph (b)(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) Import or export, as set forth at § 17.61(b).

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.61(c)(1).

(iii) 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.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d).

(v) Sell or offer for sale, as set forth at § 17.61(e).

(2) *Exceptions from prohibitions.* The following exceptions from prohibitions apply to beach layia:

(i) The prohibitions described in paragraph (b)(1) of this section do not apply to activities conducted as authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction members of beach layia that are covered by an approved cooperative agreement to carry out conservation programs.

(iii) You may engage in any act prohibited under paragraph (b)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container.

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19026 Filed 9–29–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2019–0069; FXES11130900000–189–FF0932000]

RIN 1018–BE14

Endangered and Threatened Wildlife and Plants; Reclassifying the Virgin Islands Tree Boa From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Virgin Islands tree boa (Virgin Islands boa; *Chilabothrus* (= *Epicrates*) *granti*) from an endangered species to a threatened species with a rule issued under section 4(d) of the Endangered Species Act of 1973 (Act), as amended. If we finalize this rule as proposed, it would reclassify the Virgin Islands boa from endangered to threatened on the List of Endangered and Threatened Wildlife (List). This proposal is based on a thorough review of the best available scientific data, which indicate that the species’ status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range. We are also proposing a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the Virgin Islands boa. Further, we are correcting the List to change the scientific name of the Virgin Islands boa in the List from *Epicrates monensis granti* to *Chilabothrus granti* to reflect the currently accepted taxonomy. Virgin Islands boa is a distinct species, not a subspecies, and *Epicrates* is no longer the scientifically accepted genus for this species.

DATES: We will accept comments received or postmarked on or before November 30, 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 a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 16, 2020.

ADDRESSES: *Written comments:* You may submit comments on this proposed rule by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: [http://](http://www.regulations.gov)

www.regulations.gov. In the Search box, enter FWS–R4–ES–2019–0069, 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–R4–ES–2019–0069; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: The proposed rule and supporting documents (including the species status assessment (SSA) report and references cited) are available at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2019–0069.

FOR FURTHER INFORMATION CONTACT: Edwin E. Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301 Km 5.1, Corozo Ward, Boquerón, Puerto Rico 00622; or P.O. Box 491, Boquerón, Puerto Rico 00622; telephone 787–851–7297. 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, a species may warrant reclassification from endangered to threatened if it no longer meets the definition of endangered (in danger of extinction). The Virgin Islands boa is listed as endangered, and we are proposing to reclassify it as threatened because we have determined it is no longer in danger of extinction. Reclassifications can only be made by issuing a rule. Furthermore, extending the “take” prohibitions in section 9 of the Act to threatened species, such as those we are proposing for this species under a section 4(d) rule, can only be made by issuing a rule. Finally, the change of the scientific name of the Virgin Islands boa in the List from *Epicrates monensis granti* to *Chilabothrus granti*, can only be made effective by issuing a rule.

What this rule does. We propose to reclassify the Virgin Islands tree boa from an endangered species to a threatened species with a rule issued under section 4(d) of the Act to provide measures that are necessary and advisable to provide for the conservation of this species. We also change the scientific name in the List to reflect the currently accepted taxonomy.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of 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 Virgin Islands boa is not currently in danger of extinction and, therefore, does not meet the definition of an endangered species, but is still affected by the following current and ongoing stressors to the extent that the species meets the definition of a threatened species under the Act:

- Habitat loss and fragmentation from human development (Factor A).
- Direct and indirect predation/competition by exotic mammals such as rats, cats, and possibly, to a lesser extent, mongoose (Factor C).
- Stochastic events such as hurricanes and sea level rise, exacerbated by the cumulative effects of climate change (Factor E).
- Intentional harm due to fear of snakes (Factor E).

We are also proposing a section 4(d) rule. When we list a species as threatened, section 4(d) of the Act allows us to issue regulations that are necessary and advisable to provide for the conservation of the species. Accordingly, we are proposing a 4(d) rule for the Virgin Islands boa that would, among other things, prohibit take associated with capturing, handling, trapping, collecting, or other activities, including intentional or incidental introduction of exotic species, such as cats or rats that compete with, prey upon, or destroy the habitat of the Virgin Islands boa. The proposed 4(d) rule would also except from these prohibitions take associated with certain conservation efforts.

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 six appropriate specialists regarding the species status assessment report (SSA). We received responses from five specialists on the SSA report, which informed this proposed rule. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available, after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

Information Requested

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 and information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule.

We particularly seek comments on:

- (1) Information concerning the biology and ecology of the Virgin Islands boa.
- (2) Relevant data concerning any stressors (or lack thereof) to the Virgin Islands boa, particularly any data on the possible effects of climate change as it relates to habitat, and the extent of Territorial protection and management that would be provided to this boa as a threatened species.

(3) Reasons why we should or should not reclassify the Virgin Islands boa from an endangered species to a threatened species under the Act.

(4) 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 exception within U.S. territory that would contribute to the conservation of the species. In particular, we are seeking input from experts regarding species restoration and captive propagation practices and related activities, or whether take associated with any other activities should be considered excepted from the prohibitions in the 4(d) rule.

(5) Current or planned activities within the geographic range of the Virgin Islands boa that may either negatively impact or benefit the species.

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, Caribbean 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 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** 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

The Virgin Islands boa was originally listed as an endangered subspecies (*Epicrates inornatus granti*) of the Puerto Rican boa (*Epicrates inornatus* at time of listing, now *Chilabothrus inornatus*) on October 13, 1970 (35 FR 16047), under the Endangered Species Conservation Act of 1969, and remained listed with the passage of the Act in 1973. In 1979, we published a technical correction (44 FR 70677, December 7, 1979) revising the scientific name of the Virgin Islands boa from *Epicrates inornatus granti* to *Epicrates monensis granti*. A recovery plan for this species was completed in 1986 (Service 1986, entire) and updated in September 2019. The most recent 5-year review, completed in 2009, recommended reclassifying the Virgin Islands boa to a threatened species due to the population stabilizing (Service 2009, entire). Based on this recommendation, we initiated a species status assessment (SSA) and completed an SSA report in 2018 (Service 2018, entire).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Virgin Islands boa. 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) affecting the species. The Service sent the SSA report to six independent peer reviewers and received five responses. The Service also sent the SSA report to state partners, including scientists with expertise in Virgin Islands boa habitat, for review. We received review from two experts from the Puerto Rico Department of Natural and Environmental Resources.

I. Proposed Reclassification Determination

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of the Virgin Islands boa is presented in the SSA report (Service 2018, entire; available at <https://www.fws.gov/southeast/> and at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0069). A summary of this information follows:

The Virgin Islands boa is endemic to Puerto Rico and the Virgin Islands (U.S. and British). Originally, the Virgin Islands boa was considered a subspecies of the Puerto Rican boa (*Epicrates inornatus*; Stull 1933, pp. 1–2), but was later found to be more closely related to the Mona Island boa, and the nomenclature for the two snakes was altered to reflect two subspecies, *Epicrates monensis monensis* (Mona Island boa) and *E. m. granti* (Virgin Islands boa) (Sheplan and Schwartz 1974, pp. 94–104). More recently, molecular phylogeny work indicates that the genus *Epicrates* is paraphyletic (a group composed of a collection of organisms, including the most recent common ancestor of all those organisms), and the West Indian clade (as opposed to the mainland clade) was designated as *Chilabothrus* (Reynolds et al. 2013, entire). As a result, the Virgin Islands boa is now considered its own species. We accept the change of the Virgin Islands boa's classification from the subspecies *Epicrates monensis granti* to the species *Chilabothrus granti* and are amending the scientific name to match the currently accepted nomenclature.

The Virgin Islands boa is a medium-length, slender, nonvenomous snake. The largest snout-vent lengths (SVL) recorded for the species were 1,066 millimeters (mm; 42 inches (in)) for females and 1,112 mm (44 in) for males (total body lengths 1,203 mm (47 in) and 1,349 mm (53 in), respectively; Tolson 2005, entire), although most specimens range between 600 and 800 mm (24–31 in) SVL, with an average mass of 165 grams (6 ounces) (USVI Division of Wildlife, unpub. data). Adults are gray-brown with dark-brown blotches that are partially edged with black, and feature a blue-purple iridescence on their dorsal surface; the ventral surface is creamy white or yellowish white. Newborns, on the other hand, have an almost grayish-white body color with black blotches and weigh 2.0–7.2 grams (0.07–0.25 ounces) with SVLs of 200–350 mm (approx. 8–14 inches) (Tolson 1992, pers. comm.).

The Virgin Islands boa occurs in subtropical dry forest and subtropical moist forest (Service 2009, p. 11). Subtropical dry forest covers approximately 14 percent (128,420 hectares (ha); 317,332 acres (ac)) of Puerto Rico and the U.S. Virgin Islands (USVI), typically receives less than 750 mm (29 in) rainfall annually (Ewel and Whitmore 1973, pp. 9–20), and is characterized by small (less than 5 meter (m); 16 feet (ft)) deciduous trees with high densities of interlocking branches and vines connecting adjacent tree canopies (Ewel and Whitmore 1973, p. 10). Subtropical moist forest covers approximately 58 percent (538,130 ha; 1,329,750 acres) of Puerto Rico and USVI and typically receives more than 1,100 mm (43 in) of annual rainfall. It is dominated by semi-evergreen and evergreen deciduous trees up to 20 m (66 ft) tall with rounded crowns. The Virgin Islands boa has also been reported to occur in mangrove forest, thicket/scrub, disturbed lower vegetation, and artificial structures (Harvey and Platenberg 2009, p. 114; Tolson 2003, entire).

Habitat needs for Virgin Islands boa can be divided into those for foraging and those for resting. Factors contributing to foraging habitat quality are tree density and connectivity, presence of arboreal and ground-level refugia, prey density, and rat presence/density (Tolson 1988, pp. 234–235). Tree density is more important than tree species or diversity; Virgin Islands boas do not appear to prefer a particular tree species after accounting for availability and structure (Platenberg 2018, pers. comm.). The highest densities of Virgin Islands boas are found where there are few or no exotic predators and high densities of lizard prey (Tolson 1988, p. 233; Tolson 1996b, p. 410). Resting habitat includes refugia for inactive boas to use during the day. Refugia can be the axils (angles between trunk and branches) of *Cocos* or *Sabal* species, tree holes, termite nests, or under rocks and debris (Tolson 1988, p. 233).

The Virgin Islands boa forages at night by gliding slowly along small branches in search of sleeping lizards (Service 1986, p. 6). The primary prey for the Virgin Islands boa is the Puerto Rican crested anole (*Anolis cristatellus*), and the greatest concentrations of Virgin Islands boa are found where *Anolis* densities exceed 60 individuals/100 m² (1,076 ft²; Tolson 1988, p. 233). Other prey species include ground lizard (*Ameiva exsul*), house mouse (*Mus musculus*), small birds, iguana (*Iguana iguana*) hatchlings, and likely other small animals encountered (Maclean 1982, pp. 30–31, 37; Tolson 1989, p.

165; Tolson 2005, p. 9; Platenberg 2018, pers. comm.). The Virgin Islands boa may also compete for prey and other niche components with the Puerto Rican racer (*Borikenophis portoricensis*), a snake native to Puerto Rico, the U.S. and British Virgin Islands, and surrounding cays.

Much of what is known about Virgin Islands boa life history comes from studies in captivity. Lifespans in captivity often exceed 20 years, and sometimes exceed 30 years (7% of captive Virgin Islands boas exceeded 30 years of age; Smith 2018, pers. comm.), but typical lifespans in the wild are not known. Sexual maturity is reached at 2–3 years of age (Tolson 1989, Tolson and Piñero 1985), and boas are still reproductive at >20 years of age (Tolson 2018, pers. comm.). Females breed biennially, but studies have suggested that annual breeding may occur in some conditions (Tolson and Piñero 1985). Courtship behaviors and copulation occur from February through May, and interaction with conspecifics of the opposite sex appears to be necessary for reproductive cycling (Tolson 1989). The gestation period, observed from a single known copulation between two individuals, is about 132 days (Tolson 1989). Virgin Islands boas give birth to live young from late August through October to litters of 2–10 young, and litter size increases with female body size (Tolson 1992, pers. comm.).

The exact historical distribution of the Virgin Islands boa is unknown, but its present disjointed distribution suggests that it was once more widely distributed across small islands within its range. In the 1970s, when the Virgin Islands boa was originally listed, its range was identified as three islands: Puerto Rico (no specific site), St. Thomas, USVI (from a single record), and Tortola in the British Virgin Islands (BVI) (from one report) (44 FR 70677, December 7, 1979). When the recovery plan was written (1986), 71 individuals were reported in two populations: one on the eastern side of St. Thomas in the USVI, and one at Cayo Diablo, an offshore islet in Puerto Rico (Service 2009).

Currently, the Virgin Islands boa occurs on six islands between Puerto Rico, USVI, and BVI: the eastern Puerto Rican islands of Cayo Diablo and Culebra; Río Grande on the Puerto Rican main island; eastern St. Thomas and an offshore cay in USVI (USVI Cay; an introduced population); and Tortola. A seventh population (also introduced) on the Puerto Rican island of Cayo Ratonés may still remain, although after the reestablishment of rats on this island after 2004, the status of this population is uncertain (Service 2018, p. 24). A

recent survey did not find Virgin Islands boas on Cayo Ratonés in 2018 (Island Conservation 2018, pp. 5, 17). However, because Virgin Islands boas are difficult to find, and the 2018 surveys were not extensive (e.g., did not survey the whole island), there is currently not enough evidence to conclude the Cayo Ratonés population has been extirpated. Lastly, there is also one report from 2004 that the species occurs on Greater St. James Island in St. Thomas, but nothing is known about that potential population (Dempsey 2019, pers. comm.). In 2009, based on all known populations in Puerto Rico and the USVI, an estimated 1,300–1,500 Virgin Islands boas were thought to occur (Service 2009, p. 8), although many population sizes used for this estimate are highly speculative. Based on the 2018 SSA (Service 2018, entire), current population trend estimates for Puerto Rico and USVI are either declining, potentially declining, considered rare, or unknown and most populations are small or considered rare (Service 2018, p. 30).

The population in Tortola Island, BVI, was confirmed in 2018, but there are no specific data regarding the status of that population (McGowan 2018, pers. comm.). In addition, according to anecdotal reports, the species is thought to occur on Jost Van Dyke, Guana Island, Necker Cay, Great Camanoe, and Virgin Gorda of the BVI (Mayer and Lazell 1988, entire), but data and confirmed observations are limited. There is not enough information to reliably assess the status of Virgin Islands boa populations on those islands.

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 FWS-R4-ES-2019-0069 on <http://www.regulations.gov> and at <https://www.fws.gov/southeast/>.

To assess the Virgin Islands boa's 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.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the 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 discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In the SSA report (Service 2018, pp. 12–18), we reviewed all factors (*i.e.*, threats, stressors) that could be affecting the Virgin Islands boa now or in the future. However, in this proposed rule, we will focus our discussion only on those factors that could meaningfully impact the status of the species. The risk factors affecting the status of the Virgin Islands boa vary from location to location, but generally include habitat loss and degradation from development, introduced predators, sea level rise (SLR) and a changing climate, and public attitudes towards snakes. Where habitat is available but the species is not present (*i.e.*, most of the small islands in the eastern Puerto Rico bank and USVI), it is believed that absences are due to local extirpation resulting from habitat degradation and colonization of exotic species (Service 2009, p. 11). We discuss each of the risk factors below.

Development

Virgin Islands boas occur on both privately and publicly owned land. Virgin Islands boas have been observed living in developed areas around

residences and can persist within developed areas if habitat patches are available, but only if no cats or rats are around (Platenberg and Harvey 2010, p. 552; Platenberg 2018, pers. comm.). Where boas coexist with urban development, development continues to threaten populations via habitat destruction, especially in St. Thomas, Río Grande (Puerto Rico), and Culebra Island where habitat has declined throughout decades. In St. Thomas, available habitat has declined due to development for resorts, condos, and related infrastructure, and has become more constricted and isolated (Platenberg and Harvey 2010, p. 552). In Puerto Rico, human populations are decreasing, but residential development continues to increase island-wide, including around protected areas (Castro-Prieto et al. 2017, entire). Consequences of human development on the boa and its habitat not only include habitat loss and fragmentation due to deforestation, but also mortality from vehicular strikes, an increase in predators such as cats and rats, and an increase in human–boa conflicts that results in snakes being killed because of fear of snakes (Service 2018, pp. 13–14).

Both Puerto Rico and the USVI have regulatory mechanisms established to protect the species and its habitat throughout consultation processes for the authorization of development projects. Presently, the Virgin Islands boa is legally protected under Puerto Rico's Commonwealth Law No. 241–1999 (12 L.P.R.A. Sec.107), known as the New Wildlife Law of Puerto Rico. This law has provisions to protect habitat for all wildlife species, including plants and animals. In addition, the species is protected by Puerto Rico Department of Natural and Environmental Resources (PRDNER)'s Regulation 6766, which under Article 2.06 prohibits collecting, cutting, and removing, among other activities, listed plant and animal individuals within the jurisdiction of Puerto Rico (DRNA 2004). In USVI, Act No. 5665, known as the Virgin Islands' Indigenous and Endangered Species Act, which is enforced by the U.S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), protects the species.

Despite these regulations being in place, including the requirement for developers to conduct environmental assessments and mitigate damage to the species and habitat, the regulations have proved difficult to enforce, they are often ignored by developers, and they do not cover all development activities in all Virgin Islands boa habitat (Platenberg 2011, pers. comm.). For

example, in St. Thomas, major permit applications submitted for projects in the coastal zone require an environmental impact assessment that addresses endangered species and protected habitat, but these requirements do not apply to smaller projects or those outside of the coastal zone. Furthermore, as noted in one study, even though a protocol was developed and applied to delineate habitat on protected sites and identify mitigation strategies, the absence of a legal mechanism to enforce mitigation has led to varying success as developers are slow to accept, and often ignore, the mitigation process (Platenberg and Harvey 2010, pp. 551–552).

Most offshore cays within the species' range are part of the Territorial Government or protected as wildlife refuges, thus formally protecting Virgin Islands boa habitat for three of the six populations (*i.e.*, Cayo Diablo, Cayo Ratones, and USVI Cay). Cayo Ratones and Cayo Diablo are included in La Cordillera Natural Reserve managed by the PRDNER, and the offshore cay in USVI is managed and protected by the VIDPNR. Furthermore, even though Virgin Islands boa habitat on privately owned land on Culebra Island is currently under pressure from urban and tourism development and deforestation, more than 1,000 acres of suitable habitat on the island are protected within the Service's Culebra National Wildlife Refuge.

Predation and Competition

One of the primary threats to Virgin Islands boa populations is predation by exotic mammalian predators, mainly cats and rats, and possibly, to a lesser degree, mongoose. Mongoose are not likely a major predator of Virgin Islands boa because mongoose are terrestrial and active during the day, while Virgin Islands boas are arboreal and active primarily at night, although not exclusively (Service 2018, p. 14). Feral cats are known to prey upon boas (Tolson 1996b, p. 409), and cat populations around human development are further bolstered by cat feeding stations set up by residents. There has not been direct evidence of rats preying upon Virgin Islands boas, but boas are not present on islands with high densities of rats (Tolson 1986, unpaginated; Tolson 1988, p. 235). Rats likely negatively impact Virgin Islands boas by competing for prey, or by inducing behavioral changes in *Anolis* prey that make them less likely to be encountered by boas (Tolson 1988, p. 235). However, rats may also predate on neonate boas (Service 1986, p. 12). Complete predator removal on large

developed islands is challenging, but is feasible on smaller cays. Prior to reintroduction of the boas, rats were eliminated from Cayo Ratones and the USVI Cay using anticoagulant poison (Tolson 1996b, p. 410), although Cayo Ratones was recolonized by rats sometime after August 2004, highlighting the importance of ongoing monitoring for rat presence after a removal project. Cayo Ratones was thought to harbor one of the most robust Virgin Islands boa populations, but during the recent 2018 survey, no boas were found (Island Conservation 2018, p. 20). There are no Virgin Islands boas present on islands with established rat populations and no rat predators (such as cats).

Effects of Climate Change, Including Sea Level Rise

Climate change will continue to influence Virgin Islands boa persistence into the future. Species that are dependent on specialized habitat types or limited in distribution (including the Virgin Islands boa) are most susceptible to the impacts of climate change (Byers and Norris 2011, p. 22).

The climate in the southeastern United States and Caribbean has warmed about two degrees Fahrenheit from a cool period in the 1960s and 1970s, and temperatures are expected to continue to rise (Carter et al. 2014, pp. 398–399). Projections for future precipitation trends in this area are less certain than those for temperature, but suggest that overall annual precipitation will decrease, and that tropical storms will occur less frequently but with more force (*i.e.*, more category 4 and 5 hurricanes) than historical averages (Carter et al. 2014, pp. 398–399; Knutson et al. 2010, pp. 161–162). With increasing temperatures and decreasing precipitation, drought could negatively influence Virgin Islands boa populations. After a severe drought in eastern Puerto Rico, *Anolis* populations crashed on Cayo Diablo and body condition indices of the boas plummeted (Tolson 2018, pers. comm.).

Sea levels are expected to rise globally, potentially exceeding 1 m (3 feet) of SLR by 2100 (Reynolds et al. 2012, p. 3). Local SLR impacts will depend not only on how much the ocean level itself rises, but also on land subsidence or changes in offshore currents (Carter et al. 2014, p. 400). Impacts on terrestrial ecosystems can be temporary, via submergence of habitat during storm surges, or permanent, via salt water intrusion into the water table, inundation of habitat, and erosion. SLR and hurricane storm surges in the Caribbean are predicted to inundate

low-lying islands and parts of larger islands (Bellard et al. 2014, pp. 203–204). The low-lying islands of Cayo Diablo and the USVI Cay, which support Virgin Islands boa populations, and the island of Cayo Ratones, which may still support a population, are all vulnerable to SLR and storm surges in the future. Boa populations on Río Grande, Culebra, and St. Thomas are not considered at risk from SLR; however, the three cays (Cayo Diablo, Cayo Ratones, and USVI Cay) could see 10–23 percent loss due to SLR over the next 30 years (Service 2018, pp. 38–46). Past and current observations suggest that the species can survive major hurricane events, although lasting impacts to habitat, particularly die-off of vegetation inundated by storm surges, have been observed (Platenberg 2018, pers. comm.; Smith 2018, unpaginated; Tolson 1991, pp. 12, 16; Yrigoyen 2018, pers. comm.). Loss of habitat due to storm surge impacts is similar to loss of habitat due to development; loss of low-lying forest habitat could result in decreased habitat availability for the Virgin Islands boas and their prey.

Persecution by Residents

Intentional killing of the more common and larger sized Puerto Rican boa (*Chilabothrus inornatus*) due to fear or superstitious beliefs has been well documented in the literature (Bird-Picó 1994, p. 35; Puente-Rolón and Bird-Picó 2004, p. 343; Joglar 2005, p. 146). Thus, Virgin Islands boas in proximity to developed areas where people fear snakes are susceptible to intentional killings. Public encounters with Virgin Islands boas in the more populated Río Grande and Culebra locations are considered questionable because of the rarity of boas in those populations, and there are only a couple of anecdotal records of intentional killings between those areas (Service 2009, pp. 15–16). In the highly developed east side of St. Thomas, about 10 percent of the Virgin Islands boa records in St. Thomas are from dead boas killed by humans on private property (Platenberg 2006, unpub. data). We have no further information to assess the magnitude of this threat, but it is likely that intentional killings of Virgin Islands boas still occur, are not being documented, and would be particularly detrimental to rare populations such as in Río Grande. The Service is not aware of a law enforcement case related to the boa in Puerto Rico or the USVI. Populations that occur within protected areas are not expected to be exposed to this threat.

Conservation Measures That Affect the Species

Positive influences on Virgin Islands boa viability have been habitat protection, predator control, and captive breeding and reintroduction. Two populations of Virgin Islands boa were reintroduced to protected cays after predators had been removed, one on Cayo Ratonés (Puerto Rico) in 1993, and another on USVI Cay in 2002. Founders for these reintroductions came largely from a cooperative captive-breeding program initiated in 1985 between the Service, DNER, VIDPNR, and the Toledo Zoological Garden. Cayo Diablo provided the founding individuals for the captive population that was reintroduced to Cayo Ratonés (6 kilometers (3.5 miles) away from Cayo Diablo), and St. Thomas provided the founding individuals for the captive population that was reintroduced to the USVI Cay (4 kilometers (2.5 miles) away from St. Thomas).

The Cayo Ratonés population originated from 41 captive-born boas (offspring of Cayo Diablo boas) released between 1993 and 1995. Post-release survival was high: 82.6 percent of individuals and 89 percent of neonates survived at least 1 year (Tolson 1996a, unpaginated). By 2004, the population had grown to an estimated 500 boas (Tolson et al. 2008, p. 68). Unfortunately, since 2004, Cayo Ratonés has been recolonized by rats, and no boas were found during surveys in 2018 (Island Conservation 2018, pp. 5, 20). However, because Virgin Islands boas are difficult to find, and this survey was not exhaustive, we believe it is premature to conclude the population has been extirpated. Intensive follow-up surveys are needed to confirm whether a population still persists or is extirpated, but it is clear that the population has declined.

The USVI Cay reintroduction was initiated with the release of 42 Virgin Islands boas in 2002 and 2003, 11 from captivity and 31 from St. Thomas. Follow-up surveys in 2003–2004 provided an estimate of 168 boas (202 boas/ha), which researchers suspected was near carrying capacity for the island (Tolson 2005, p. 9). More recent surveys in 2018 detected 20 boas over 2 nights, resulting in an estimate of 26–33 boas across the island (Island Conservation 2018, pp. 20–30). Differences in survey and analysis methodologies complicate direct comparisons of population size between these time points. Recent surveys also indicate that there are no rats on the island.

Factors for consideration for future reintroduction sites include the

presence and amount of suitable habitat (e.g., appropriate forest structure, adequate prey base, available refugia), protection status or threat of development, the presence/absence/eradication of exotic predators, and geomorphology that provides protection from SLR and hurricane storm surges that are likely to affect the persistence of low-lying habitat. Potential sites for new introductions have been suggested (Reynolds et al. 2015, p. 499) and need to be further assessed, although one new effort is in the early stages of implementation. Some areas may require that predators be removed before boas are moved and future monitoring is ensured to prevent recolonization. In addition to reintroductions to new sites, augmentation of existing populations may prove beneficial or necessary for the persistence of existing populations, particularly on developed islands and cays where predators have become reestablished.

In conclusion, the Virgin Islands boa still faces the threat of development on St. Thomas, Río Grande, and Culebra Island, and regulatory mechanisms addressing this threat are difficult to enforce or do not cover all development actions affecting the species. Human development results in habitat loss from deforestation and fragmentation, mortality from vehicular strikes, and increased predation by cats and rats. In addition, impacts from changes in climate could affect habitat. Drought could negatively influence Virgin Islands boa populations through loss of prey. SLR and storm surges are expected to inundate low-lying islands, such as Cayo Diablo, Cayo Ratonés, and the USVI Cay, which currently support Virgin Islands boa populations. Finally, persecution of boas by citizens, due to fear or superstition, can affect individual boas, although there has never been a systematic study of the impact of these events on the overall population.

When considering conservation actions and how they influence the viability of Virgin Islands boa, about half of known localities where Virgin Islands boas occur are on small offshore islets managed for conservation. In addition, predator removal has been successful at smaller cays, such as USVI Cay, although the reestablishment of rats on Cayo Ratonés illustrates the need for continued monitoring and removal efforts. Lastly, successful reintroductions of Virgin Islands boas occurred on these islands after the eradication of predators; however, additional predator removal and augmentation of reintroduced boa populations may be needed on cays

where predators have become reestablished.

Summary of Current Condition

For the Virgin Islands boa to maintain viability, its populations, or some portion thereof, must be resilient. For the SSA, our classification of resiliency relied heavily on habitat characteristics in the absence of highly certain population size or trend estimates. The habitat characteristics we assessed were: Degree of habitat protection (or, conversely, development risk), presence of introduced predators, and vulnerability to storm surges (Service 2018, p. 31).

Representation can be measured by the breadth of genetic or environmental diversity within and among populations and gauges the probability that a species is capable of adapting to environmental changes. A range-wide genetic analysis of the Virgin Islands boa showed there was little genetic variation; however, the same study found that each sampled locality had unique mtDNA haplotypes, indicating a lack of gene flow between islands (Rodríguez-Robles et al. 2015, entire). Therefore, in the SSA we used genetics to delineate representative units.

The species also needs to exhibit some degree of redundancy in order to maintain viability. Catastrophic events that could affect both single and multiple populations of the Virgin Islands boa include drought, hurricanes, and colonization or recolonization of exotic predators. This species occurs in geographically isolated groups and does not disperse from island to island to interact and interbreed; therefore, for purposes of analyzing redundancy, all boas within each island were considered to be individual populations.

Resiliency

Because resiliency is a population-level attribute, the key to assessing it is the ability to delineate populations. As discussed above, we considered all boas within each island to be single populations. On small offshore cays, what we define as a population might consist of a single interbreeding deme (or subdivision) of Virgin Islands boas. On larger islands, what we define as a population functions more as a metapopulation, with multiple interbreeding groups in isolated habitat patches that may interact weakly via dispersal and recolonization of extirpated patches. Alternately, multiple occupied patches on large islands may be completely isolated from one another (Service 2018, p. 20).

Six island populations were considered: Cayo Diablo, Cayo Ratones, Culebra Island, Río Grande (Puerto Rico), St. Thomas, and USVI Cay (USVI). We acknowledge the uncertainty about the persistence of Virgin Islands boas on Cayo Ratones due to the recolonization of the island by rats; however, because of reasons described previously, we included this island in our analysis. Further, one or more populations exist in the BVI, but data are severely limited, and for the SSA, we lacked sufficient data from these islands to incorporate them into our viability analysis. In addition, other populations may occur on islands in Puerto Rico and USVI, but Virgin Islands boa habitat and activity patterns

make them difficult to find, and we could not confirm any to be extant at the time we completed our analysis.

Resiliency scores for each population were generated by combining scores for three habitat metrics (Protection/Development Risk, Exotic Mammals, and Storm Surge Risk) and one population metric (Population Size and/or Trend, dependent on availability). Each metric was weighted equally, with the overall effect that habitat (three metrics) was weighted three times higher than population size/trend (one metric). For each metric, populations were assigned a score of -1, 0, or 1, as described below in table 1.

The scores were based on the best available information for each population, gathered from the literature

and species experts. Monitoring data are scarce. The Virgin Islands boa recovery plan (Service 1986, pp. 16–19) called for periodic monitoring to estimate population sizes and trends, but surveys since then have been few and far between. Survey methodology and reporting have varied from population to population, with survey results given as estimated abundances, estimated densities, or encounter rates per person-hour of searching. The above-described factors in combination contribute to high levels of uncertainty in current and past population sizes, and how they have changed over time. Accordingly, resiliency classifications relied more heavily on habitat conditions than population size and trend estimates.

TABLE 1—DESCRIPTION OF HABITAT AND POPULATION FACTOR SCORES TO DETERMINE VIRGIN ISLANDS BOA POPULATION RESILIENCY

Score	Habitat metrics			Population metric
	Habitat protection/development risk	Exotic mammals	Storm surge risk	Population size/trend*
-1	Habitat not protected, at risk of being developed.	Exotic mammals present	Topography and elevation leaves population vulnerable to storm surges.	Relatively low population size and/or declining trend.
0	Some habitat protected, some at risk of being developed.	NA	NA	Relatively moderate population size and stable trend, OR High degree of uncertainty in population size/trends.
1	Habitat protected in identified protected area.	Exotic mammals absent	Protected by topography and elevation.	Relatively high population size and/or growth.

* Population size/trend scores are relative and were based on the best available information for each population, gathered from the literature and species experts.

The scores for each population across all metrics were summed, and final population resiliency categories were assigned as follows:

- Low Resiliency: -4 to -2
- Moderately Low Resiliency: -1
- Moderate Resiliency: 0
- Moderately High Resiliency: 1
- High Resiliency: 2 to 4

Applying these resiliency categories to the six populations of Virgin Islands boa, we determined that one population has moderately high resiliency (Cayo Diablo), one has moderate resiliency (USVI Cay), one has moderately low resiliency (Culebra), and three have low resiliency (Cayo Ratones, Río Grande, and St. Thomas).

The population classified as having moderately high resiliency (Cayo Diablo) occurs on a small offshore island that is free of exotic rats and cats and is protected for conservation. In addition, Cayo Diablo was surveyed in 2018 with 10 boas being found (Island Conservation 2018). Extrapolating the density within the transect area (2.9

boas/ha) to the entire island, the model provides an estimate of 20 boas on the island (95% confidence interval 13–39), which is much lower than earlier unpublished survey results, however comparisons cannot be made between the surveys because of different survey and analytical methodologies (Service 2018, p.23). Primarily because of the protected and exotic-mammal-free state of the habitat, this population is considered to have moderately high resiliency to demographic and environmental stochastic events and disturbances (e.g., fluctuations in demographic rates, variation in climatic conditions, illegal human activities).

The USVI Cay population, also on a protected offshore island with no exotic mammals, was determined to have moderate resiliency. Recent surveys have revealed a potential decline in abundance and the loss of two prey species (Smith 2018a, pp. 7–8), possibly as a result of density dependence as the population approached carrying capacity after reintroduction. Over two

separate survey efforts in 2018, researchers found a total of 64 boas (Smith 2018ab, entire).

Three of the populations (Río Grande, Culebra, and St. Thomas) with low or moderately low resiliency occur on larger and higher elevation islands, which provide more protection from storm surges, but have more human-boa interactions, habitat loss and fragmentation from development, and exotic cats and rats. Recent surveys in 2018 on Río Grande found three boas (three survey nights) (Island Conservation 2018, p. 20). For Culebra, surveys in 2018 found no boas (Island Conservation 2018, p. 20); however, two individuals were documented in February 2019 within the Culebra National Wildlife Refuge (Puente-Rolón and Vega-Castillo 2019, p. 18). On October 2019, another individual was confirmed in an area outside of the Refuge (Román 2019, pers. comm.). For St. Thomas, there have been no recent systematic surveys for the species as much of eastern St. Thomas is

inaccessible due to private ownership or impenetrable habitat; however, opportunistic observations have averaged about 10 observations of Virgin Islands boa per year since 2000. The remaining low-resiliency population (Cayo Ratones) is classified as such as a result of the recolonization of rats on the island and resulting declining trend—or possible extirpation—of boas, as no boas were detected during recent survey efforts (Island Conservation 2018).

Representation

A range-wide genetic analysis of Virgin Islands boa showed that there was little genetic variation within the species (Rodríguez-Robles et al. 2015, p. 150), supporting the idea that there is only one representative unit of Virgin Islands boa. However, each sampled island, and each sampled locality within the same island, had unique mtDNA haplotypes, indicating a lack of gene flow between islands/populations (Rodríguez-Robles et al. 2015, p. 150). These results suggest that each population has a different genetic signature, perhaps as a result of genetic adaptations to their local environment, or genetic drift with increasing isolation of small populations. The reintroduction program took this view, and managed captive populations

sourced from Cayo Diablo and St. Thomas separately (Tolson 1996b, p. 412). To minimize the chances of introducing individuals poorly suited to their new environment, the captive population sourced from Cayo Diablo founded the reintroduced population on nearby Cayo Ratones, and the captive St. Thomas population founded the reintroduced population on the nearby USVI Cay (Tolson 1996b, p. 412).

In addition to genetic differences, the six populations also have noticeable phenotypic differences. These are not just limited to coloration differences between USVI and Puerto Rican populations (Tolson 1996b, p. 412); Cayo Diablo reportedly has lighter coloration than the Río Grande and Culebra populations (Tolson 2018, pers. comm.). The Río Grande population also occurs in a different habitat type (subtropical moist forest) than the others (subtropical dry or littoral forest; Tolson 1996b, p. 410).

In light of this information, we considered each of the four natural populations in Puerto Rico and USVI as a representative unit (table 2). The Cayo Diablo population is considered to have moderately high resiliency. As this was the source for the low-resiliency Cayo Ratones population, there are two populations representing the Cayo Diablo genetic signature. Similarly, the

USVI Cay population was sourced from St. Thomas, so there are two populations with St. Thomas representation, with neither considered to have high resiliency. The other two natural populations, Culebra and Río Grande, both characterized as having moderately low or low resiliency, have not been used for captive breeding and reintroduction, so have no additional populations on other islands with the same genetic characteristics. Overall, three of four representative units have at least one moderate resilient population.

While currently we could consider the USVI Cay and Cayo Ratones reintroduced populations (currently with moderate and low resiliency, respectively) to be redundant populations sharing the same genetic signature and adaptive potential as their source populations, all of the islands occupied by Virgin Islands boa are isolated from each other. Without human-mediated movement of boas between islands, the reintroduced populations are expected to diverge genetically from their source populations over time, and may at some point in the future (decades to centuries; Reynolds et al. 2015, entire) be different enough to be considered its own unique representative unit.

TABLE 2—REPRESENTATION: NUMBER OF VIRGIN ISLANDS BOA POPULATIONS OF EACH RESILIENCY CLASS IN EACH REPRESENTATIVE UNIT, CORRESPONDING TO NATURAL (NOT INTRODUCED) POPULATIONS, WHICH THEMSELVES CORRESPOND TO UNIQUE GENETIC SIGNATURES

Natural population (genetic signature)	Moderately high resiliency populations	Moderate resiliency populations	Moderately low resiliency populations	Low resiliency populations
Cayo Diablo	1	0	0	1
Culebra	0	0	1	0
Río Grande	0	0	0	1
St. Thomas	0	1	0	1

Redundancy

Redundancy describes the ability of a species to withstand catastrophic events. Measured by the number of populations, their resiliency (ability of a species to withstand environmental and demographic stochasticity (e.g., wet or dry years)) and their distribution (and connectivity), redundancy gauges the probability that the species has a margin of safety to withstand or return from catastrophic events (such as a rare destructive natural event or episode involving many populations).

The exact historical distribution of the Virgin Islands boa is unknown, but their present disjointed distribution suggests that they were once more widely distributed across small islands within

their range, which have been subject to local extirpations from habitat degradation, invasive species, and historical climate and sea level changes. However, for current redundancy, we identified the six populations in Puerto Rico and USVI (and one or more populations in the BVI of unknown status). As discussed above, three of these populations are considered to have resiliency; therefore, the species is moderately buffered against the effects of catastrophic events.

Summary

Of the six assessed populations, the Cayo Diablo population is the only one that currently has moderately high resiliency, the USVI Cay population has

moderate resiliency, and the Culebra population has moderately low resiliency. The other three assessed populations currently have low resiliency. Redundancy for the species includes populations on six islands in Puerto Rico and USVI, and possibly more in the BVI, although not part of this assessment. Representation consists of four representative units, two of which have two populations representing its genetic signature, and three of the four units have populations with some level of resiliency.

The Virgin Islands boa has demonstrated some ability to adapt to changing environmental conditions over time from both anthropogenic threats (e.g., habitat disturbance due to

development) and natural disturbances (e.g., predation and hurricanes). Compared to historical distribution at the time of listing that included three locations (Puerto Rico, St. Thomas, and Tortola), the species currently has six populations (potentially more if the species persists in the BVI and others are eventually confirmed). Three of the six current populations exhibit varying levels of resiliency from moderately high to moderately low, whereas three exhibit low resiliency. Since the species was listed as an endangered species in 1970, it has demonstrated some degree of resiliency despite threats.

Future Conditions

To assess the future resiliency, redundancy, and representation for the Virgin Islands boa, we considered impacts of human development, habitat protection and restoration, reintroductions, public outreach and education, and SLR. We predicted resiliency at two future time points, 30 years and ~80 years in the future (2048 and 2100). Predictions made at the 80-year time point are based only on SLR and hurricane storm surges as predictions about the other factors are too uncertain to allow for a meaningful analysis. As discussed in Determination of Status below, all of the impacts were considered at the 30-year time step. With input from species' experts, we chose the 30-year time step in order to encompass multiple generations of Virgin Islands boa (which can live past 20 years and reproduce at 2–3 years of age; Tolson 1989, p. 166; Tolson and Piñero 1985, unpaginated). In addition, we considered the time required to plan and execute a reintroduction (about 10 years; Tolson 2018, pers. comm.) and how a 30-year time step would allow us to see results of reintroduction efforts. Lastly, we considered the time required for habitat restoration to be realized (10 years or less; Platenberg 2018, pers. comm). The 30-year time step coincides with the foreseeable future for this analysis (i.e., the period of time in which we can make reliable predictions). For information on predictions made at the 80-year time step, see the SSA report (Service 2018, pp. 38–46).

We did not explicitly consider the role that genetics may play in the future. Although the absence of natural migration of boas between islands isolates these populations and makes them vulnerable to inbreeding and genetic drift, no genetic abnormalities or evidence of inbreeding depression have been observed in the boa (Tolson 1996b, p. 412). We also did not explicitly consider the impacts of climate change

(other than SLR and hurricane storm surges) on the boas and their habitat. Species that are dependent on specialized habitat types and limited in distribution and migration ability, such as the Virgin Islands boa, are susceptible to the impacts of climate change (Byers and Norris 2011, p. 22), but the direction, magnitude, and timeframe of these impacts on the species are uncertain.

Below we present three plausible future scenarios for the Virgin Islands boa over the next 30 years (to 2048): Status Quo, Conservation, and Pessimistic. Impacts of climate change and SLR are treated the same across all three scenarios, as the trajectory of climate change will proceed regardless of different levels of local conservation for Virgin Islands boa. For all three scenarios, SLR is considered to occur at a rate of 0.30 meters (1 foot) by 2048, and 0.61–0.91 meters (2–3 feet) by 2100 (Church et al. 2013; Service 2018, pp. 38–41). Multiple major hurricanes are expected to strike within the Virgin Islands boa's range.

Under a status quo scenario: Development continues at the current pace, and development and exotic mammals continue to negatively impact Virgin Islands boa populations. Boa population sizes in these developed areas decline, as they are suspected to currently be in decline by species experts (but hard data are lacking to confirm trends). No new habitat is protected. Under this scenario, one new reintroduction that has already been initiated with the 2018 capture of snakes to reinvigorate captive breeding takes place.

Under a conservation scenario: While development continues on human-occupied islands, under this scenario new Virgin Islands boa habitat is protected from development on the Puerto Rico main island, and additional habitat is protected on Culebra and St. Thomas (where some habitat is already protected), to preserve and restore habitat and habitat connectivity. Because of the size of the islands and human populations there, exotic cats and rats remain problematic, but this risk would be reduced by conservation efforts including predator control and effective community outreach and education about the effect of free-roaming cats on native wildlife. Regulations and enforcement improve on protected lands. Rats are eradicated (and eradication efforts are monitored) from Cayo Ratones and, if necessary, more boas are translocated there. Reintroductions occur at a rate of one site per decade, including the one reintroduction already planned, and

struggling populations on developed islands are augmented.

Under a pessimistic scenario: Under the Pessimistic scenario, no reintroductions occur, presumably due to reduced funds or changes in governmental or conservation priorities. No additional habitat is protected, and development continues to impact populations on human-inhabited islands. Exotic mammals remain a threat where already present. Rats colonize Cayo Diablo and recolonize the USVI Cay.

Given current resources, priorities, and conservation momentum, the Status Quo scenario is the most likely scenario for the future. The Status Quo scenario includes the implementation of a new reintroduction, which is planned but contingent on continued funding (not yet secured) and a long-term commitment to manage and propagate a captive population, select a suitable site (which may involve rat eradication), reintroduce boas, and conduct post-release monitoring. The likelihoods of the Conservation and Pessimistic scenarios are contingent upon the decisions, resources, and priorities of management and conservation organizations, which are difficult to predict. The Pessimistic scenario is likely if funds and effort are not directed to captive breeding and reintroduction, community outreach and education, habitat protection and restoration, and ongoing monitoring of Virgin Islands boas, their habitat, and exotic species. The Conservation scenario is likely if abundant funds and effort are directed towards these initiatives.

Resiliency

Under all three future scenarios, the three populations on developed islands are predicted to remain at low resiliency or become extirpated by 2048 (table 3). Even with conservation efforts to prevent extirpation, none of the populations are expected to improve their resiliency because of the magnitude of the threats facing them. Cayo Diablo, the population with the highest resiliency, is expected to continue to have high resiliency unless the island is colonized by rats, which could drive the population to extirpation. Cayo Ratones, which presently has a robust rat population, will remain at low resiliency and potential extirpation unless rats are eradicated; supplemental translocations may also be necessary, but more surveys are necessary to determine the needs of the population. Given that the threats facing populations on developed islands will be very difficult to surmount, the most effective way to increase the

overall resiliency of populations range-wide is to reintroduce new populations in quality protected habitat, prevent future colonization by exotic predators, and have continual predator eradication monitoring.

TABLE 3—SUMMARY TABLE OF FUTURE RESILIENCY FOR VIRGIN ISLANDS BOA POPULATIONS IN 2048 UNDER THREE SCENARIOS

Population	Current resiliency	Future—status quo (2048)	Future—conservation (2048)	Future—pessimistic (2048)
Cayo Diablo	Moderately High	Moderately High	High	Low/Extirpated.
Cayo Ratones	Low	Low/Extirpated	High	Low/Extirpated.
Culebra	Moderately Low	Low/Extirpated	Moderately Low	Low/Extirpated.
Río Grande	Low	Low/Extirpated	Low	Low/Extirpated.
St. Thomas	Low	Low/Extirpated	Low	Low/Extirpated.
USVI Cay	Moderate	Moderate	High	Low/Extirpated.
New (introduced) populations (pops).	None	1 High	3 High	None.
Summary (# pops)	6 pops	3–7 pops	9 pops	0–6 pops.
	Low: 3	Low/Extirpated: 4	Low: 2	Low/Extirpated: 6.
	Mod Low: 1	Moderate: 1	Mod Low: 1	High: 0.
	Moderate: 1	Mod High: 1	High: 6	
	Mod High: 1	High: 1		

Redundancy

The total number of populations under the Status Quo scenario is three to seven depending on whether four populations become extirpated or remain at a low resiliency. Under the Pessimistic scenario, all populations are predicted to be extirpated or remain at low resiliency. The Conservation scenario improves redundancy by introducing three new populations that are expected to have high resiliency, improving the resiliency of the Cayo Ratones population by eradicating rats and providing translocations if needed, and preventing low-resiliency populations from becoming extirpated, for a total of nine populations. As time goes on after the horizon of our 30-year scenarios, SLR becomes more important to consider, as current populations with the highest resiliency potential are the same populations that will be most at risk from SLR.

Representation

In the *Current Condition* section above, we identified each natural (not introduced) Virgin Islands boa population as a representative unit. Under this concept, a reintroduced population is of the same representative unit as the source population used for the reintroduction, and future representation for the species depends highly on how reintroductions are carried out (table 11 in Service 2018, p. 59).

The Status Quo scenario includes one reintroduction sourced from the USVI Cay population, which was originally sourced from the St. Thomas population. Therefore, the new reintroduced population would be considered part of the St. Thomas representative unit. The Conservation

scenario includes two additional reintroductions, which could be sourced from any population. Sourcing new reintroductions from Culebra or Río Grande would improve redundancy within representative units, but other factors such as geographic proximity to the reintroduction site and availability of source boas also factor into the decision of where to source reintroductions. The Pessimistic scenario does not include any new reintroduced populations.

Summary

Conservation of existing populations of Virgin Islands boas and their habitat on developed islands, via population augmentation and habitat restoration (in occupied areas and to establish migration corridors), is important to contribute to resiliency and redundancy within representative areas for the species. The future condition of the Virgin Islands boa was assessed under three scenarios 30 years into the future. Under the Status Quo scenario, development continues to impact the populations on developed islands, no new habitat is protected, and one new reintroduction takes place. Two moderately high or high-resiliency populations are predicted to remain after 30 years (Cayo Diablo and a new reintroduced population), while USVI Cay remains in moderate resiliency, and the remaining four populations are predicted to have low resiliency or potentially be extirpated.

Under the Conservation scenario, some habitat on the three developed islands is protected for conservation/restoration, reintroductions occur at a rate of one per decade, and presence of exotic mammals are monitored and controlled (though likely not eradicated)

via continuous eradication efforts and public outreach. Six high-resiliency populations are predicted to exist after 30 years. Under this scenario, three populations are expected to have moderately low or low resiliency, but are protected from complete extirpation by active conservation measures. Under the Pessimistic scenario, development continues to impact populations on developed islands, no reintroductions occur, and rats colonize/recolonize the islands where they are not currently present. No highly resilient populations are predicted to remain after 30 years, and all six current populations are at risk of extirpation.

Redundancy increases under the Status Quo and Conservation scenarios; however, under the Pessimistic scenario, no high-resiliency populations remain. Representation remains the same four units under the Status Quo scenario. Under the Conservation scenario, redundancy may improve within representative units with the addition of two more reintroduced populations, depending on where those populations are sourced. Based on our analysis, we consider the Status Quo scenario to be the most likely scenario, and therefore expect the Virgin Islands boa will have three resilient populations at our 30-year timeframe, with continued redundancy and representation.

We also assessed the risk from SLR and hurricanes at 30 years into the future. In 30 years, SLR alone is unlikely to significantly impact Virgin Islands boa populations, with approximately 4–5 percent of land predicted to be inundated (Service 2018, p. 43). Habitat on low-lying cays (Cayo Diablo, Cayo Ratones, and USVI Cay) has proven to be resilient to hurricanes

in the past, and likely will remain so with 0.30 meters (1 foot) of SLR expected over the next 30 years, although the exact impacts of any particular future storm are impossible to predict. Overall, USVI Cay is most at risk from SLR and storm impacts, while there is a moderate risk of SLR impacts to Virgin Islands boas and habitat on Cayo Diablo and Cayo Ratonés, and low risk at Culebra, Río Grande, and St. Thomas.

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.

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans are not regulatory documents and are instead intended to establish goals for long-term conservation of a listed species; define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act; and provide guidance to our Federal, State, and other governmental and nongovernmental partners on methods to minimize threats to listed species.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are

minimized sufficiently and the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent to which existing criteria are appropriate for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The Virgin Islands Tree Boa Recovery Plan, issued by the Service on March 27, 1986, did not contain measurable criteria. An amendment to the recovery plan was issued in September 2019 to include quantitative delisting criteria. The amended recovery plan suggests that recovery be defined in the following terms:

- *Delisting Criterion 1. Existing two (2) Virgin Islands boa populations with the highest resiliency (Cayo Diablo and USVI Cay) exhibit a stable or increasing trend, evidenced by natural recruitment and multiple age classes.* This criterion has been partially met. Ensuring the conservation of resilient populations is important for the recovery of the Virgin Islands boa as it will help those populations to further withstand catastrophic and stochastic events. The populations of the Virgin Islands boa at Cayo Diablo and USVI Cay are considered potentially declining (Tolson 2004, p. 11; Tolson et al. 2008, p. 68), and currently have moderately high and moderate resiliency, respectively (Service 2018, pp. 23, 28). Both Cayo Diablo and USVI Cay are free of exotic predators/competitors and are protected as part of natural reserves. Habitat conditions are recovering following hurricanes, and Virgin Islands boas continue to persist, with upwards of 20 boas estimated on Cayo Diablo, and boas appear to be at carrying capacity on USVI Cay (Service 2018, pp. 23, 28). In addition, these resilient populations may serve as sources to establish the new populations outlined in Criterion 2, if maintained at their current level. Virgin Islands boas have already been collected from the USVI Cay population to establish a captive-breeding program in order to implement Criterion 2.

Five islands (Culebra, Río Grande (Puerto Rico), St. Thomas, Cayo Ratonés, and Tortola) currently have Virgin Islands boas present, although population numbers and age class

structures are unknown. Cayo Ratonés had a thriving population, with 41 introduced boas in 1993–1995 having high survival and wild reproduction and were able to increase numbers to nearly 500 boas by 2005 (Tolson et al. 2008, p. 68; Service 2018, p. 24). However, recent surveys in 2018 did not detect any boas, but did uncover a robust rat population (Island Conservation 2018, entire; Service 2018, p. 24). Because Virgin Islands boas are hard to find and habitat conditions remain in good condition post hurricanes, there is not enough evidence to indicate boa extirpation, although the reestablishment of rats is likely causing decline in this population. For Culebra, surveys in 2018 found no boas (Island Conservation 2018, p. 20); however, two individuals were documented in February 2019 within the Culebra National Wildlife Refuge (Puente-Rolón and Vega-Castillo 2019, p. 18). On October 2019, another individual was confirmed in an area outside of the Refuge (Román 2019, pers. comm.). The Puerto Rican Río Grande population has consistent but very low encounter rates for Virgin Islands boas, with three observed during recent 2018 surveys. These two populations were determined to have low (Río Grande) and moderately low (Culebra) resiliency. Similarly, the species has been sighted on St. Thomas (Platenberg and Harvey 2010, entire), and earlier estimates assessed the population to be about 400 individuals (Tolson 1991, p. 11). Despite lack of recent surveys on St. Thomas (primarily due to inaccessibility of habitat), opportunistic reports indicate approximately 10 Virgin Islands boa observations per year since 2000 (Service 2018, p. 27). The SSA classifies this population as having low resiliency. Virgin Islands boas are known to occur on Tortola (and likely several other British Virgin islands); however, no data are available about the size or status of those populations (Service 2018, p. 29).

- *Delisting Criterion 2. Establish three (3) additional populations that show a stable or increasing trend, evidenced by natural recruitment and multiple age classes.* This criterion has not been met. Increasing the number of resilient populations will improve the species' viability. In order to expand the species' distribution, these new populations will be established on protected suitable habitat where threats from invasive mammals are not present and SLR will have minimal impact on the habitat. In addition, increasing the number of populations and broadening the species' distribution will enhance their ability to

withstand catastrophic and stochastic events. For this species, it is believed that three additional populations exhibiting these traits is necessary to ensure sufficient redundancy such that the species will no longer require protection under the Act.

• *Delisting Criterion 3. Threats are reduced or eliminated to the degree that the species is viable for the foreseeable future.* This criterion has been partially met. The primary threats to Virgin Islands boa are development, predation/competition from exotic mammals, climate change, and persecution from the public. Virgin Islands boa populations have coexisted with urban development on Culebra, Río Grande, St. Thomas, and several British Virgin islands, although impacts from the development appear to cause a decline in these populations. Consequences of human development on the boa and its habitat include habitat loss and fragmentation due to deforestation, mortality from vehicular strikes, and an increase in predators/competitors, such as cats and rats. Three islands (Cayo Diablo, Cayo Ratones, and USVI Cay) are protected from development impacts. The threat of predation/competition by exotic mammals can be reduced/eliminated, but requires continual monitoring and eradication efforts. In 1985, a successful rat control program was started, and Cayo Ratones and USVI Cay were identified as potentially suitable for the reintroduction of the species. At one time, rats had been eliminated on Cayo Ratones, but they have since returned and are in robust numbers. Rats on USVI Cay have been eliminated, and Virgin Islands boas are established there. In areas where urban development is prevalent, it is unlikely that feral cats and rats will be fully eradicated. Storm surge and SLR are the effects of climate change that are projected to impact Virgin Islands boa populations; however, the species has thus far proven to be resilient to severe storms (and associated storm surge) and SLR is not expected to significantly impact the species in the foreseeable future (see Future Conditions, above). Finally, intentional killing of Virgin Islands boas, whether due to fear of snakes or confusion with other snakes, has been identified as a threat; however, the extent of the effect of persecution on Virgin Islands boa populations is unknown.

Summary

The amended Virgin Islands boa recovery plan (Service 2019) contains three recovery criteria for delisting the species: Two Virgin Islands boa

populations exhibit a stable or increasing trend, evidenced by natural recruitment and multiple age classes; three additional populations show a stable or increasing trend, evidenced by natural recruitment and multiple age classes; and threats are reduced or eliminated to the degree that the species is viable for the foreseeable future. Based on the information gathered and analyzed, two of these criteria have been partially met.

Determination of Virgin Islands Boa Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 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 “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as a species “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

After evaluating threats to the species and assessing the cumulative effects of the threats under the section 4(a)(1) factors, we find that, while the present or threatened destruction, modification, or curtailment of its habitat (Factor A) remains a threat for at least three of the populations, three of the six populations fully occur in protected areas, and we expect the species’ population resiliency to ameliorate the threat in the future. The Virgin Islands boa’s habitat is found on both private and publicly owned lands. Past, current and expanding urban development will continue to impact the Virgin Islands boa on the main islands (*i.e.*, St. Thomas, Río Grande (Puerto Rico), and Culebra), which are under development pressure related to urban expansion and tourism; however, not all areas of the species’ range occur near population centers. Half of the currently known populations are found on islands and small islets that are managed for

conservation by the territorial governments of Puerto Rico and USVI, and the Culebra Island population occurs both within private and protected areas (*i.e.*, Culebra National Wildlife Refuge).

Predation by exotic mammals, namely cats and rats, remains a threat to the Virgin Islands boa (Factor C). While there is no evidence of rats preying directly on the Virgin Islands boa, Virgin Islands boas are generally not present on islands with high densities of rats. This is likely due to competition for prey rather than predation.

Reintroductions of Virgin Islands boas have been successful on islands where rat populations have been exterminated. Feral cats are known to prey on boas and are an ongoing threat to the species.

The fear of snakes, as well as superstitious beliefs and even confusion with other snakes, may contribute to the intentional killing of Virgin Islands boas (Factor E), although there has not yet been a systematic study done to determine if these individual deaths are having a species-wide effect.

Due to the limited distribution of Virgin Islands boas, climate change and SLR (Factor E) may also have an impact. Low-lying islands and parts of larger islands, where Virgin Islands boa populations are supported, are vulnerable to SLR and storm surge. The species has persisted despite major hurricane events, although there may be impacts to habitat (*e.g.*, die-off of vegetation) due to storm surge.

The Virgin Islands boa has demonstrated some ability to adapt to changing environmental conditions over time (representation) from both anthropogenic threats (*e.g.*, habitat disturbance due to development) and natural disturbances (*e.g.*, predation and hurricanes). Since the species was listed as an endangered species in 1970, it has demonstrated resiliency despite threats. Since the writing of the recovery plan (Service 1986, entire), two new populations have been reintroduced (Cayo Ratones and USVI Cay) and two previously unknown populations have been discovered (Culebra and Río Grande), although the continued persistence of the Cayo Ratones population is uncertain. There are currently at least six populations (not including those potentially on the BVI) with varying levels of resiliency; one population has moderately high resiliency, one has moderate resiliency, one has moderately low resiliency, and three have low resiliency. Based on the biology of the species and the documented responses to the development and reintroductions since

listing, we expect the species to respond the same way in the foreseeable future.

Our implementing regulations at 50 CFR 424.11(d) set forth a framework within which we evaluate 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.

The foreseeable future described here uses the best available data and considers the species' life-history characteristics, threat projection timeframes, and environmental variability, which may affect the reliability of projections. We also considered the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. We determined the foreseeable future to be 30 years from present. As discussed above, the SSA's future scenarios considered impacts from development, habitat restoration and protection, reintroductions of the Virgin Islands boa, and SLR. Based on the modeling and scenarios evaluated for Virgin Islands boa, we considered our ability to make reliable predictions in the future and the uncertainty with regard to how and to what degree the species would respond to factors within this timeframe. In addition, the timing and response of habitat to restoration efforts (presumably multiple efforts needed, and spaced out over time as funding and resources permit) and the species' response to those improved habitat conditions, as well as the lifespan of the species (which can exceed 20 years in captivity) also informed our foreseeable future timeframe.

Taking into account the impacts of the factors based on the Status Quo scenario, and because the Virgin Islands boa contains three relatively resilient populations now (*i.e.*, having moderately high to moderately low resiliency), and two of those populations are predicted to maintain their moderate to moderately high resiliency in the future, especially in populations where exotic mammals are not present, we expect the species to maintain populations on two of the six islands within the foreseeable future. However, continuation of the current population trends for these two populations into the future is dependent on management (*e.g.*, habitat conservation/preservation and predator control/eradication). Under the Status Quo scenario, the three populations on developed islands are predicted to possibly become extirpated by 2048. Under the Conservation Scenario, up to six populations are predicted to become highly resilient within the foreseeable future. While threat intensity and management needs vary somewhat across the range of the species (*e.g.*, urban population areas versus non-populated conserved areas), Virgin Islands boa populations on islands throughout the range of the species continue to be reliant on active conservation management and require adequate implementation of regulatory mechanisms, and all remain vulnerable to threats that could cause substantial population declines in the foreseeable future (*e.g.*, feral cat predation).

Despite the existing regulatory mechanisms and conservation efforts, the factors identified above continue to affect the Virgin Islands boa. However, the species has persisted with varying degrees of resiliency since it was listed in 1970. Once known from three locations, now known from at least six locations, the species was successfully introduced to two new locations (one possibly extirpated by uncontrolled exotic mammals) and discovered at two new locations, and could be at additional locations in the unsurveyed BVI and other areas in St. Thomas; thus, the known distribution has expanded since listing. Thus, after assessing the best available information, we determine that the Virgin Islands boa 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.

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 within 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 Virgin Islands boa, 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.

For Virgin Islands boa, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Habitat loss and degradation from development, introduced predators, SLR and a changing climate, and public attitudes towards snakes, including cumulative effects. For detailed descriptions of each threat, see *Summary of Biological Status and Threats*, above.

Impacts from habitat loss and degradation are prevalent throughout the range of the Virgin Islands boa. The boas occur on both privately and publicly owned land. Habitat loss and fragmentation from deforestation happens with the development of privately owned land, and even occurs around protected areas. Habitat loss also happens from SLR. Loss of habitat due to SLR and storm surge impacts is similar to loss of habitat due to

development where the loss of low-lying forest habitat could result in decreased habitat availability for the Virgin Islands boas and their prey. All known islands and cays that are occupied by Virgin Islands boas are threatened with habitat loss and fragmentation.

Similarly, the threat of introduced predators is of concern range-wide for the Virgin Islands boa. Feral cats are known to prey upon boas, and rats may predate on neonate boas or compete with boas for prey. Cats and rats are easily introduced to islands, usually via boat. Efforts to eliminate exotic mammalian predators has been successful on some of the smaller cays, but requires continual removal and monitoring on the larger developed islands.

Climate change is expected to influence Virgin Islands boa persistence throughout its range into the future. Species that are limited in distribution, such as the Virgin Islands boa, are susceptible to the impacts of climate change. Temperatures throughout the Caribbean are expected to rise, precipitation is likely to decrease (resulting in drought), and tropical storms may occur less frequently but with more force. Every island and cay within the range of the Virgin Island boa is susceptible to these impacts from a changing climate.

The intentional killing of Virgin Islands boas is a threat to the species regardless of where it occurs. While those boas that live in proximity to developed areas are more susceptible to intentional killings, public fear towards snakes is a threat that can impact the boas throughout their range.

Low population numbers can be considered a threat such that the other threats acting on the species can result in a concentration of threats to extremely small populations. Data presented in the SSA indicate that current population trend estimates for Virgin Island boas in Puerto Rico and USVI are uncertain, indicating that they are either declining, potentially declining, considered rare, or unknown, but most populations are small or considered rare. Rarity does not necessarily equate to dangerously small population sizes, and because the survey methodologies and reporting has varied from population to population and over time, population size and trend estimates were not exclusively relied on to determine resiliency. Despite the rarity of Virgin Island boas on most islands, the species has demonstrated resiliency for decades, and is predicted to continue to maintain resiliency, despite threats. Therefore

small population numbers across the range of the species are not considered to contribute to a concentration of threats.

We found no concentration of threats in any portion of the Virgin Islands boa's range at a biologically meaningful scale. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides 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 Virgin Islands boa meets the definition of a threatened species. Therefore, we propose to reclassify the Virgin Islands boa as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence 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 statutory language like "necessary and advisable" 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, the second sentence of 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), in the case of fish or wildlife, or section 9(a)(2), in the case of plants." Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the

specific conservation needs of the threatened species. The second sentence 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 upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of 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 upheld 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" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising our authority under section 4(d), we have developed a species-specific proposed rule that is designed to address the Virgin Islands boa'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 rule taken 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 Virgin Islands boa. As discussed above under Summary of Biological Status and Threats, the Service has concluded that the Virgin Islands boa is likely to become in danger of extinction within the foreseeable future primarily due to development-associated impacts (*i.e.*, habitat fragmentation and loss, vehicular strikes), predation/competition by exotic species, climate change, and persecution by the public. In addition, the species is management reliant in that it depends on maintaining current levels of management and establishing new populations into suitable habitat. Therefore, the provisions of this proposed 4(d) rule would promote

conservation of the Virgin Islands boa by encouraging species restoration efforts. The provisions of this proposed rule are one of many tools that the Service would use to promote the conservation of the Virgin Islands boa. The proposed 4(d) rule would apply only if and when the Service makes final the reclassification of the Virgin Islands boa as a threatened species.

Provisions of the Proposed 4(d) Rule

The proposed 4(d) rule would provide for the conservation of the Virgin Islands boa 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; or sale or offering for sale in interstate or foreign commerce. We also propose several exceptions to these prohibitions, which along with the prohibitions are set forth under Proposed Regulation Promulgation, below.

Under the Act, "take" means 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 preserve the species' remaining populations, enable beneficial management actions to occur, and decrease synergistic, negative effects from other stressors.

Protecting the Virgin Islands boa from direct and indirect forms of take, such as physical injury or killing, whether incidental or intentional, will help preserve and recover the remaining populations of the species. Therefore, we propose to prohibit intentional and incidental take of Virgin Islands boa, including, but not limited to, capturing, handling, trapping, collecting, destruction and modification of its habitat, or any other activities that would result in take of the species.

As discussed above under Summary of Biological Status and Threats, a range of activities have the potential to impact the species, including development, intentional killing of boas by private citizens, and introduction of exotic predators/competitors (e.g., cats, rats). Regulating these activities will help preserve the remaining populations and protect individual boas.

Protecting the Virgin Islands boa from incidental take, such as harm that results from habitat degradation, will

likewise help preserve the species' populations and also decrease negative effects from other stressors impeding recovery of the species. The species' continuance may be dependent upon active management occurring on the islands and cays, especially as it concerns exotic predator control and human development. Most offshore islands and cays where the Virgin Islands boa is found are protected by municipal, territorial, and Federal agencies. However, existing land protections provided by those agencies are not comprehensive for the Virgin Islands boa and are often not enforced.

We determined that one of the primary threats to the Virgin Islands boa is the presence of exotic mammals, which, when present in high densities, is indicative of a lack of boa populations. Therefore, any introduction of exotic species, such as cats or rats, that compete with, prey upon, or destroy the habitat of the Virgin Islands boa would further impact the species and its habitat and therefore will also be prohibited by the proposed 4(d) rule.

Maintaining and expanding existing populations, and creating new populations, is also vital to the conservation of the Virgin Islands boa. Therefore, the proposed 4(d) rule would provide for the conservation of the species by excepting from the take prohibitions conservation efforts by Federal, Commonwealth, Territory, and municipal wildlife agencies to benefit the Virgin Islands boa, including control and eradication of exotic mammals, habitat restoration, and collection of broodstock, tissue collection for genetic analysis, captive propagation, and reintroduction into currently occupied and unoccupied areas within the historical range of the species. Efforts by these wildlife agency entities to monitor and survey Virgin Islands boa populations and habitat that require handling, temporary holding, pit tagging, tissue sampling, and release would also be excepted from the take prohibitions under this proposed 4(d) rule.

The fear of snakes, as well as superstitious beliefs, may contribute to the intentional killing of boas. Although we cannot address fear or beliefs in a 4(d) rule, we can except from the prohibitions take associated with removing boas from houses and other structures to provide alternatives to killing individual boas. Therefore, the proposed 4(d) rule would except from the prohibitions take associated with nonlethal removal of Virgin Islands boas from human structures, and returning them to natural habitat.

Even for activities prohibited by the 4(d) rule, including those described above, we may issue permits to carry out those activities 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, Commonwealth, and Territory natural resource agency partners in contributing to conservation of listed species. State, Commonwealth, and Territory agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. These agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service 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, Commonwealths, and Territories in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a Commonwealth or Territory 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 Virgin Islands boa that may result in otherwise prohibited take without additional authorization.

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 Virgin Islands boa. 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 Commonwealth and Territorial 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).

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11 to reclassify the Virgin Islands boa from endangered to threatened on the List of Endangered and Threatened Wildlife. Additionally, if the proposed 4(d) rule is adopted in a final rule, the Service will detail prohibitions set forth at 50 CFR 17.21 and 17.32, except for incidental take associated with conservation efforts by Federal, Commonwealth, Territory, or municipal wildlife agencies; nonlethal removal from human structures; and monitoring and survey efforts of Virgin Islands boa. In addition, we will revise the List of Endangered and Threatened Wildlife to change the species' scientific name to *Chilabothrus granti*.

Required Determinations

Clarity of the Proposed 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:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) 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.

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)).

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, 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 no tribal lands associated with this proposed rule.

References Cited

A complete list of references cited is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0069 and upon request from the Field Supervisor, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this proposed rule are staff members of the Service's Species Assessment Team and the Caribbean 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.

§ 17.11 Endangered and threatened wildlife.

- 2. Amend § 17.11 in paragraph (h) by revising the entry for "Boa, Virgin Islands tree" under REPTILES in the List of Endangered and Threatened Wildlife to read as follows:

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Reptiles				
*	*	*	*	*
Boa, Virgin Islands tree ..	<i>Chilabothrus granti</i>	Wherever found	T	35 FR 16047, 10/13/1970; 44 FR 70677, 12/7/1979; [Federal Register citation of the final rule]. 50 CFR 17.42(j). ^{4d}
*	*	*	*	*

- 3. Amend § 17.42 by adding paragraph (j) to read as set forth below:

§ 17.42 Special rules—reptiles.

* * * * *

(j) Virgin Islands tree boa (*Chilabothrus granti*)—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to Virgin

Islands tree boa. Except as provided under paragraph (j)(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 activities in regard to this species:

- (i) Import or export, as set forth at § 17.21(b);
- (ii) Take, as set forth at § 17.21(c)(1);
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1);
- (iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e); and
- (v) Sale or offer for sale, as set forth at § 17.21(f).
- (vi) The intentional or incidental introduction of exotic species, such as cats or rats, that compete with, prey

upon, or destroy the habitat of the Virgin Islands boa is also prohibited.

(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) Possess and engage in other acts with unlawfully taken endangered wildlife, as set forth at § 17.21(d)(2).
- (v) Incidental take of Virgin Islands tree boa resulting from:

(A) Conservation efforts by Federal, Commonwealth, Territory, or municipal wildlife agencies, including, but not limited to, control and eradication of exotic mammals and habitat restoration, and collection of broodstock, tissue

collection for genetic analysis, captive propagation, and reintroduction into currently occupied or unoccupied areas within the historical range of the Virgin Islands tree boa.

(B) Nonlethal removal (and return to natural habitat) of Virgin Islands tree boa from human structures, defense of human life, and authorized capture and handling of Virgin Islands tree boas.

(C) Efforts to monitor and survey Virgin Islands tree boa populations and habitat that may include handling, temporary holding, pit tagging, tissue sampling, and release.

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19027 Filed 9–29–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 85, No. 190

Wednesday, September 30, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2020-0064]

Addition of Papua New Guinea to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Papua New Guinea to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in Papua New Guinea.

DATES: Papua New Guinea was added to the APHIS list of regions considered affected with ASF on April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. John Grabau, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606. Phone: (919) 855-7738; email: John.H.Grabau@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious animal disease of wild and domestic swine. It can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of->

regions/. This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. In 9 CFR 96.2, there are requirements for the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On March 30, 2020, the veterinary authorities of Papua New Guinea reported to the OIE the occurrence of ASF in that country. This confirmation of the ASF outbreak supported APHIS' action on April 1, 2020, adding Papua New Guinea to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notification of that action.

As a result, pork and pork products from Papua New Guinea, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C.801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 25th day of September 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020-21603 Filed 9-29-20; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish-South Mount Baker Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Snohomish-South Mount Baker Snoqualmie Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: <https://www.fs.usda.gov/main/mbs/workingtogether/advisorycommittees>.

DATES: The meeting will be held on November 5, 2020, at 9:00 a.m., Pacific Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under *Supplementary Information*. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mt. Baker-Snoqualmie National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dan Kipervaser, Designated Federal Officer,

by phone at 425-783-6061 or via email at daniel.kipervaser@usda.gov.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide updates regarding status of Secure Rural Schools Title II program and funding;
2. Review project proposals submitted by the October 16, 2020 deadline; and
3. Recommend eligible projects and funding level.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by October 24, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Dan Kipervaser, Designated Federal Officer, 2930 Wetmore Ave., Suite 3A, Everett, Washington 98201; by email to daniel.kipervaser@usda.gov, or via fax to 425-783-0141.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2020-21561 Filed 9-29-20; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Revision to the Agricultural Labor Survey and Farm Labor Reports by Suspending Data Collection for October 2020

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of change to data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) not to collect data for the currently approved information collection, the Agricultural Labor Survey, and its associated publication originally planned for November 2020.

FOR FURTHER INFORMATION CONTACT:

Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.

OMB Control Number: 0535-0109.

Expiration Date of Approval: February 28, 2022.

Type of Request: To suspend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides quarterly statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked have been used to estimate agricultural productivity; wage rates have been used in the administration of the H-2A Program and for setting Adverse Effect Wage Rates. Survey data have also been used to carry out provisions of the Agricultural Adjustment Act.

USDA has determined the public can access other data sources for the data collected in the Agricultural Labor Survey. These sources include, but are not limited to, the Agricultural Resources Management Survey (ARMS), Census of Agriculture (COA), American Community Survey (ACS), Quarterly Census of Employment and Wages (QCEW), National Economic Accounts, and the National Agricultural Workers Survey (NAWS). Therefore, NASS will not be collecting data in October 2020, as originally planned. NASS will not publish the biannual Farm Labor report this November.

Authority: These data were collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: There will be no further public reporting burden for this quarterly collection of information.

Signed at Washington, DC, September 24, 2020.

William Northey,

Under Secretary, Farm Production and Conservation USDA.

[FR Doc. 2020-21592 Filed 9-29-20; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-59-2020]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia Notification of Proposed Production Activity, OFS Fitel, LLC (Optical Fiber Products) Carrollton, Georgia

OFS Fitel, LLC (OFS Fitel) submitted a notification of proposed production activity to the FTZ Board for its facility in Carrollton, Georgia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 21, 2020.

The OFS Fitel facility is located within FTZ 26. The facility is used for the production of optical fiber products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt OFS Fitel from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, OFS Fitel would be able to choose the duty rates during customs entry procedures that apply to optical fibers and optical fiber cables, bundles and ribbon (duty rates are duty-free or 6.7%). OFS Fitel would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Color chips (high concentration of pigments and additives encapsulated by a polymer); UV curable ink (liquid prepolymer); epoxy; plastic jacketing compound; flame retardant plastic jacketing compound; acrylic plastic central members or rods; standard non-waterblock and waterblock aramid yarn; water block tape (nonwoven polyester); stainless steel wire; optical fibers; optical bundles; steel tape; alloy steel tape; and, jacketed plastic strength

members (duty rate ranges from duty-free to 8.8%). The request indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is November 9, 2020.

A copy of the notification will be available for public inspection in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Diane Finver at Diane.Finver@trade.gov or (202) 482-1367.

Dated: September 24, 2020

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2020-21583 Filed 9-29-20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-523-808]

Certain Steel Nails From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No-Shipments; 2018-2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain steel nails (steel nails) from the Sultanate of Oman (Oman) are not being sold in the United States at less than normal value during the period of review (POR) of July 1, 2018 through June 30, 2019. Additionally, we preliminarily find that certain companies made no shipments during the POR.

DATES: Applicable September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dakota Potts at (202) 482-0223 or Stephen Bailey at (202) 482-0193, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

On July 13, 2015, Commerce published the antidumping duty (AD) Order on nails from Oman.¹ On July 1, 2019, Commerce notified interested parties of the opportunity to request an administrative review of orders with anniversaries in July 2019.² On July 31, 2019, Oman Fasteners LLC (Oman Fasteners) and Mid Continent Steel & Wire, Inc. (the petitioner) each requested that Commerce conduct an administrative review with respect to seven companies.³ On September 9, 2019, Commerce initiated the AD administrative review of steel nails from Oman for the POR.⁴ On October 4, 2019, Commerce selected Oman Fasteners as the sole mandatory respondent in this review and issued the initial AD questionnaire.⁵ Between November 1, 2019 and June 12, 2020, Oman Fasteners timely responded to Commerce's requests for information.

On March 18, 2020, Commerce extended the deadline for the preliminary results of this review by 65 days.⁶ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days,⁷ and again on July 21, 2020, by an additional 60 days,⁸ thereby extending the deadline for these results until September 23, 2020.

Scope of the Order

The merchandise covered by this Order is steel nails having a nominal

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (Order).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295 (July 1, 2019).

³ See Petitioner's Letter, "Certain Steel Nails from Oman: Request for Administrative Reviews," dated July 31, 2019; see also Oman Fasteners' Letter, "Certain Steel Nails from Oman; Fourth Review; Oman Fasteners' Request for Review," dated July 31, 2019.

⁴ The following exporters and/or producers of steel nails from Oman are subject to this review: (1) Al Kiyumi Global LLC (Al Kiyumi); (2) Astrotech Steels Private Ltd. (Astrotech); (3) Geekay Wires Limited (Geekay); (4) Modern Factory For Metal Products (Modern Factory); (5) Oman Fasteners; (6) Trinity Steel Private Limited (Trinity); and (7) WWL India Private Ltd (WWL India). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019) (Initiation Notice).

⁵ See Commerce's Letter dated October 4, 2019.

⁶ See Memorandum, "Certain Steel Nails from the Sultanate of Oman: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 18, 2020.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April, 24, 2020.

⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

shaft length not exceeding 12 inches.⁹ Merchandise covered by the Order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to this Order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this Order is dispositive. For a complete description of the scope of the Order, see the Preliminary Decision Memorandum.¹⁰

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.¹¹ A list of topics included in the Preliminary

⁹ The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

¹⁰ See Memorandum, "Decision Memorandum for Preliminary Results of the 2018-2019 Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman," dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

¹¹ See Preliminary Decision Memorandum.

Decision Memorandum is included as an Appendix to this notice.

Preliminary Determination of No Shipments

On October 1, 3, and 4, Astrotech, Geekay, and Trinity, respectively, submitted letters certifying that each company had no exports or sales of subject merchandise into the United States during the POR.¹² U.S. Customs and Border Protection (CBP) did not have any information to contradict these claims of no shipments during the POR. Therefore, we preliminarily determine that Astrotech, Geekay, and Trinity did not have any reviewable transactions during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Astrotech, Geekay, and Trinity, but rather will complete the review and issue instructions to CBP based on the final results.¹³

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

¹² See Astrotech's Letter, "Certain Steel Nails from Oman Request for No Shipment During the Period of Review (POR)," dated October 1, 2019; Geekay's Letter, "Certain Steel Nails—Oman Request for No Shipment during the Period of Review (POR)," dated October 3, 2019; and Trinity's Letter, "Certain Steel Nails—Oman Notice of No Sales During the Period of Review (POR)," dated October 4, 2019.

¹³ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013*, 79 FR 51306, 51307 (August 28, 2014).

In this review, we have calculated a weighted-average dumping margin for the sole respondent, Oman Fasteners of zero percent. Accordingly, we have assigned to the companies not individually examined a margin of 0.00 percent, the sole margin calculated in this proceeding.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period July 1, 2018 through June 30, 2019:

Exporter/producer	Weighted-average dumping margins (percent)
Oman Fasteners LLC	0.00
Al Kiyumi Global LLC	0.00
Modern Factory For Metal Products	0.00
WWL India Private Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.¹⁴

Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁵ Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.¹⁶ Executive summaries should be limited to five pages total, including footnotes.¹⁷ Case and rebuttal briefs should be filed using ACCESS.¹⁸

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing

¹⁴ See 19 CFR 351.309(d)(1).

¹⁵ See 19 CFR 351.303 (for general filing requirements); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁶ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁷ *Id.*

¹⁸ See 19 CFR 351.303.

within 30 days of the publication of this notice in the **Federal Register**. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.¹⁹

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.*, 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales, in accordance with 19 CFR 351.212(b)(1).²⁰ For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.²¹ Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to

¹⁹ See section 751(a)(3)(A) of the Act.

²⁰ In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

²¹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the methodology described in the “Rates for Non-Examined Companies” section.

Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirement

The following cash deposit requirements will be effective upon publication of the notice of the final results of administrative review for all shipments of nails from Oman entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, as it is for Oman Fasteners LLC in these preliminary results. In that case, no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.10 percent *ad valorem*, the all-others rate established in the less-than-fair value investigation.²²

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding

²² See *Certain Steel Nails from the Republic of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015).

the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: September 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Companies Not Selected for Individual Examination
- V. Preliminary Determination of No Shipments
- VI. Discussion of the Methodology
- VII. Recommendation

[FR Doc. 2020–21582 Filed 9–29–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–822, A–301–804, A–729–804, A–421–814, A–517–806, A–489–842, A–520–809]

Prestressed Concrete Steel Wire Strand From Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, the Republic of Turkey, and the United Arab Emirates: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Preliminary Affirmative Critical Circumstances Determinations, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that prestressed concrete steel wire strand (PC strand) from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, the Republic of Turkey (Turkey), and the United Arab Emirates (UAE) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2019 through March 31, 2020. The estimated margins of sales at LTFV are shown in the “Preliminary

Determinations” section of this notice. Interested parties are invited to comment on these preliminary determinations.

DATES: Applicable September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta at (202) 482–2593 (Argentina); Hermes Pinilla at (202) 482–3477 (Colombia); David Crespo at (202) 482–3693 (Egypt); Bryan Hansen at (202) 482–3683 (the Netherlands); Drew Jackson at (202) 482–4406 (Saudi Arabia); David Goldberger at (202) 482–4136 (Turkey); and Charles Doss at (202) 482–4474 (UAE), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of these investigations on May 13, 2020.¹ Acindar Industria De Sinal S.A. (Acindar) is the sole mandatory respondent in the investigation covering PC strand from Argentina; Knight S.A.S. (Knight SAS) is the sole mandatory respondent in the investigation covering PC strand from Colombia; United Wires Company Elsewedy is the sole mandatory respondent in the investigation covering PC strand from Egypt; Nedri Spanstaal BV is the sole mandatory respondent in the investigation covering PC strand from the Netherlands; National Metal Manufacturing & Casting Co. (National Metal Manufacturing) is the sole mandatory respondent in the investigation covering PC strand from Saudi Arabia; Celik Halat ve Tel Sanayi A.S. (Celik Halat) and Güney Çelik Hasir ve Demir (Güney Celik) are the mandatory respondents in the investigation covering PC strand from Turkey; and GSS International Trading FZE (GSS) and Gulf Steel Strands FZE (Gulf Steel) are the mandatory respondents in the investigation covering PC strand from the UAE. For a complete description of the events that followed the initiation of these investigations, see the Preliminary Decision Memoranda.² A list of topics

¹ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair Value Investigations*, 85 FR 28605 (May 13, 2020) (*Initiation Notice*).

² See Memorandum, “Decision Memorandum for the Preliminary Determinations in the Less-Than-Fair-Value Investigations of Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan and the

included in the Preliminary Decision Memoranda is included as Appendix II to this notice. The Preliminary Decision Memoranda are public documents and are made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memoranda can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memoranda are identical in content.

Scope of the Investigations

The product covered by these investigations is PC strand. For a full description of the scope of these investigations, see the "Scope of the Investigations," in Appendix I of this notice.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,³ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ However, Commerce received no comments on the scope of these investigations from interested parties.

Methodology

Commerce is conducting these investigations in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available to assign estimated weighted-average dumping margins to the mandatory respondents in these seven investigations because none of the respondents either submitted a response to Commerce's antidumping duty questionnaire, or submitted a timely response to Commerce's antidumping duty questionnaire. Further, Commerce is preliminarily determining that these mandatory respondents failed to cooperate by not acting to the best of their ability to comply with a request for information and is using an adverse inference when selecting from among the facts otherwise available (*i.e.*,

United Arab Emirates" dated concurrently with this notice; and Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair Value Investigation of Prestressed Concrete Steel Wire Strand from Turkey," dated concurrently with, and hereby adopted by, this notice (collectively, Preliminary Decision Memoranda).

³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴ See *Initiation Notice*, 85 FR at 28606.

applying adverse facts available (AFA)) to these respondents, in accordance with section 776(b) of Act. For a full description of the methodology underlying our preliminary determinations, see the Preliminary Decision Memoranda.

Critical Circumstances

On August 24, 2020, the petitioners⁵ timely filed critical circumstances allegations, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Colombia, Egypt, and the Netherlands.⁶ On August 28, 2020, Commerce requested that the petitioners file an addendum to their critical circumstances allegation.⁷ In response, the petitioners filed an addendum providing the requested additional U.S. import data.⁸ We received no rebuttal information from interested parties.

On September 2, 2020, the petitioners timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the PC strand from Turkey.⁹ Also on September 2, 2020, Commerce requested that Celik Halat provide monthly quantity and value (Q&V) data.¹⁰ On September 3, 2020, Commerce requested that the petitioners file an addendum to their critical circumstances allegation.¹¹ In response, Celik Halat filed the requested Q&V data and the petitioners filed an addendum providing the requested

⁵ The petitioners are Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corporation (collectively, the petitioners).

⁶ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Colombia, Egypt, and Netherlands—Petitioners' Allegation of Critical Circumstances," dated August 24, 2020.

⁷ See Commerce's Letter dated August 28, 2020. Commerce asked the petitioners to provide U.S. import data for subject merchandise from Colombia, Egypt, and the Netherlands for February 2020 through April 2020, as the base period, and import data for May 2020 through July 2020, as the comparison period. Commerce also provided an opportunity for interested parties other than the petitioners to submit factual information to rebut, clarify, or correct factual information in the addendum.

⁸ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Colombia, Egypt, the Netherlands, Taiwan and Turkey—Petitioners' Updated Import Volume Data for Their Critical Circumstances Allegations," dated September 8, 2020 (Addendum to Allegation).

⁹ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Taiwan and Turkey—Petitioners' Allegation of Critical Circumstances," dated September 2, 2020.

¹⁰ See Commerce's Letter dated September 2, 2020.

¹¹ See Commerce's Letter dated September 3, 2020.

additional U.S. import data.¹² The petitioners did not file a critical circumstances allegation with respect to Argentina, Saudi Arabia, or the UAE.

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of PC strand exported by (1) Knight SAS from Colombia; (2) United Wires Company Elsewedy and all other producers/exporters from Egypt; (3) Nedri Spanstaal BV from the Netherlands; and (4) Celik Halat, Güney Celik, and all other producers/exporters from Turkey.¹³

All-Others Rate

Sections 733(d)(1)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated, in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margins in these preliminary determinations were determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with

¹² See Celik Halat's Letter, "Pre-Stressed Concrete Steel Wire Strand from Turkey: Initial Critical Circumstances Response of Celik Halat ve Tel Sanayi A.S.," dated September 4, 2020; and Addendum to Allegation.

¹³ For a full description of Commerce's preliminary critical circumstances determinations, see the Preliminary Decision Memoranda.

section 735(c)(5)(B) of the Act, Commerce typically averages the margins alleged in the petitions and applies the results to all other entities not individually examined.

With respect to Argentina, in the Petitions,¹⁴ the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from Argentina, we preliminarily assigned the only margin alleged for subject merchandise from Argentina in the Petitions, which is 60.40 percent.¹⁵

With respect to Colombia, in the Petitions,¹⁶ the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from Colombia, we preliminarily assigned the only margin alleged for subject merchandise from Colombia in the Petitions, as recalculated for the purposes of initiation, which is 86.09 percent.¹⁷

With respect to Egypt, in the Petitions,¹⁸ the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from Egypt, we preliminarily assigned the only margin alleged for subject merchandise from Egypt in the Petitions, as recalculated for the purposes of initiation, which is 29.72 percent.¹⁹

¹⁴ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates—Petition for the Imposition of Antidumping and Countervailing Duties," dated April 16, 2020 (the Petitions) at Volume II; and AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from Argentina (May 6, 2020).

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; and AD Investigation Initiation Checklist: Argentina.

¹⁶ See Petitions at Volume III.

¹⁷ We note that the petitioners revised the calculated rate from that submitted in the Petitions. See Petitions at Volume III; and Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates—Petitioners' Amendment to Volume III Related to Antidumping Duties from Colombia," dated April 27, 2020 at 4 and Exhibit AD-CO-SUPP-3; and AD Investigation Initiation Checklist: Colombia.

¹⁸ See Petitions at Volume IV.

¹⁹ We note that the petitioners revised the calculated rate from that submitted in the Petitions. See Petitions at Volume IV; Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates—Petitioners' Amendment to Volume IV Related to Antidumping Duties from Egypt," dated April 27, 2020 at 4 and Exhibit AD-EG-SUPP-2; and AD Investigation Initiation

With respect to the Netherlands, in the Petitions,²⁰ the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from the Netherlands, we preliminarily assigned the only margin alleged for subject merchandise from the Netherlands in the Petitions, which is 30.86 percent.²¹

With respect to Saudi Arabia, in the Petitions,²² the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from Saudi Arabia, we preliminarily assigned the only margin alleged for subject merchandise from Saudi Arabia in the Petitions, which is 194.40 percent.²³

With respect to Turkey, in the Petitions,²⁴ the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from Turkey, we preliminarily assigned the only margin alleged for subject merchandise from Turkey in the Petitions, which is 53.65 percent.²⁵

With respect to the UAE, in the Petitions,²⁶ the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering PC strand from the UAE, we preliminarily assigned the only margin alleged for subject merchandise from the UAE in the petitions, as recalculated for the purposes of initiation, which is 170.65 percent.²⁷

Preliminary Determinations

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period April 1, 2019 through March 31, 2020:

Checklist: Prestressed Concrete Steel Wire Strand from Egypt.

²⁰ See Petitions at Volume VIII.

²¹ See AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from the Netherlands.

²² See Petitions at Volume IX.

²³ See AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from Saudi Arabia.

²⁴ See Petitions at Volume XIV.

²⁵ See AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand Turkey.

²⁶ See Petitions at Volume XVI.

²⁷ We note that the petitioners revised the calculated rate from that submitted in the petitions. See Petitions at Volume XVI; and Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates—Petitioners' Amendment to Volume XVI Related to Antidumping Duties from the United Arab Emirates," dated April 27, 2020 at 4 and Exhibit AD-AE-SUPP-3; and AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from the United Arab Emirates.

ARGENTINA	
Exporter/producer	Dumping margin (percent)
Acindar Industria (Argentina) de Sinal S.A.	60.40
All Others	60.40

COLOMBIA	
Exporter/producer	Dumping margin (percent)
Knight SAS	86.09
All Others	86.09

EGYPT	
Exporter/producer	Dumping margin (percent)
United Wires Company Elsewedy	29.72
All Others	29.72

THE NETHERLANDS	
Exporter/producer	Dumping margin (percent)
Nedri Spanstaal B.V.	30.86
All Others	30.86

SAUDI ARABIA	
Exporter/producer	Dumping margin (percent)
National Metal Manufacturing & Casting Co.	194.40
All Others	194.40

TURKEY	
Exporter/producer	Dumping margin (percent)
Celik Halat ve Tel Sanayi A.S.	53.65
Güney Çelik Hasir ve Demir	53.65
All Others	53.65

UNITED ARAB EMIRATES	
Exporter/producer	Dumping margin (percent)
GSS International Trading FZE ..	170.65
Gulf Steel Strands FZE	170.65
All Others	170.65

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S.

Customs and Border Protection (CBP) to suspend liquidation of all entries of PC strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Turkey, and the UAE, as described in the “Scope of the Investigations” in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. In accordance with 733(e)(2)(A), suspension of liquidation of PC strand from Colombia, Egypt, the Netherlands, and Turkey as described in the “Scope of the investigations” in Appendix I, shall apply to unliquidated entries of merchandise from imports of PC strand exported by: (1) Knight SAS from Colombia; (2) United Wires Company Elsewedy and all other producers/exporters from Egypt; (3) Nedri Spanstaal BV from the Netherlands; and (4) Celik Halat, Güney Celik, and all other producers/exporters from Turkey, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered.

We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d) to require a cash deposit equal to the margins indicated in the charts above. These suspension of liquidation instructions will remain in effect until further notice.

Verification

Because each mandatory respondent in these investigations did not act to the best of their ability to provide information requested by Commerce, and Commerce preliminarily determines each of the mandatory respondents to be uncooperative, we will not conduct verifications.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary

determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each mandatory respondent in these investigations, in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Interested parties are invited to comment on these preliminary determinations no later than 30 days after the date of publication of these preliminary determinations.²⁸ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.²⁹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these proceedings are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) The party’s name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.³⁰

Final Determinations

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

²⁸ See 19 CFR 351.309(c)(1)(i); see also 19 CFR 351.303 (for general filing requirements).

²⁹ See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

³⁰ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Accordingly, Commerce will make its final determinations no later than 75 days after the signature date of these preliminary determinations.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of our affirmative preliminary determinations. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

These determinations are issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The merchandise covered by these investigations is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft² standard set forth in ASTM-A-475.

The PC strand subject to these investigations is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memoranda

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigations
- V. Application of Facts Available, Use of Adverse Inferences, and Calculation of All-Others Rate
- VI. Preliminary Critical Circumstances Findings

VII. Conclusion

[FR Doc. 2020-21546 Filed 9-29-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-868]

Prestressed Concrete Steel Wire Strand From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Negative Preliminary Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that prestressed concrete steel wire strand (PC strand) from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2019 through March 31, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or John Hoffner, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-1168 or (202) 482-3315, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 13, 2020.¹ For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.² A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public

¹ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 28605 (May 13, 2020) (*Initiation Notice*).

² See Memorandum, “Decision Memorandum for the Preliminary Determination in Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Taiwan,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is PC strand from Taiwan. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce’s regulations,³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. See the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Chia Ta World Co., Ltd. (Chia Ta). For a full description of the methodology underlying the preliminary determination, see the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist for Chia Ta and all other producers/exporters of PC strand from Taiwan. For a full description of the methodology and results of Commerce’s critical circumstances analysis, see the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not

³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁴ See *Initiation Notice*, 85 FR at 28606.

individually investigated. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for Chia Ta, the sole mandatory respondent, under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, Commerce’s normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition. With respect to Taiwan, in the Petitions,⁵ the petitioners⁶ alleged only one margin. Therefore, we have preliminarily assigned the only margin alleged for subject merchandise from Taiwan in the Petitions, which is 23.89 percent, to all other producers/exporters.⁷

Preliminary Determination

Commerce preliminarily determines that the following estimated dumping margins exist during the period April 1, 2019 through March 31, 2020:

Exporter/producer	Estimated dumping margin (percent)
Chia Ta World Co., Ltd***	23.89
All Others	23.89

*** Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S.

⁵ See Petitioner’s Letter, “Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates—Petition for the Imposition of Antidumping and Countervailing Duties,” dated April 16, 2020 (the Petitions) at Volume XII; see also AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from Taiwan, dated May 6, 2020 (AD Checklist).

⁶ Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corporation (collectively, the petitioners).

⁷ See AD Checklist.

Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for Chia Ta will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA in determining the estimated weighted-average margin for the sole individually examined company, Chia Ta, in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the single rate alleged in the petition, there are no calculations to disclose.

Verification

Because Chia Ta did not provide information requested by Commerce, and Commerce preliminarily determines Chia Ta to be uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this preliminary determination, unless

Commerce alters the time limit.⁸ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.⁹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these proceedings are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by ACCESS by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁰

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

⁸ See 19 CFR 351.309(c)(1)(i); see also 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

⁹ See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements); and *Temporary Rule*.

¹⁰ See *Temporary Rule*.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, in accordance with 735(b), the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft² standard set forth in ASTM-A-475.

The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. Application of Facts Available and Use of Adverse Inferences and Calculation of All-Others Rate
- VI. Preliminary Critical Circumstances Finding
- VII. Recommendation

[FR Doc. 2020-21547 Filed 9-29-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A–533–824, A–583–837, C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India and Taiwan: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on polyethylene terephthalate film, sheet, and strip (PET film) from India and the AD order on PET film from Taiwan, would likely lead to a continuation or recurrence of dumping and countervailable subsidies, as well as material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith at (202) 482–5255 or Elfi Blum-Page at (202) 482–0197; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

On July 2, 2002, Commerce published the AD *Orders* on PET film from India and Taiwan and the CVD *Order* on PET film from India.¹ On July 1, 2019, the ITC instituted,² and Commerce initiated, the third five-year (sunset) reviews of the *Orders*,³ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its reviews, Commerce determined that revocation of the AD

India Order, *AD Taiwan Order*, and *CVD India Order* would likely lead to a continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.⁴

On September 22, 2020, the ITC published its determination, pursuant to section 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Orders

The products covered by the *Orders* are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *AD India Order*, *AD Taiwan Order*, and *CVD India Order*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the

¹ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002) (*AD India Order*); *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 44174 (July 1, 2002) (*AD Taiwan Order*); and *Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44179 (July 1, 2002) (*CVD India Order*), (collectively, the *Orders*).

² See *Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan: Institution of Five-Year Reviews*, 84 FR 31343 (July 1, 2019).

³ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 31304 (July 1, 2020).

⁴ See *Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders*, 84 FR 59355 (November 4, 2019); see also *Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 84 FR 59356 (November 4, 2019).

⁵ See *Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India and Taiwan*, 85 FR 59548 (September 22, 2020).

Federal Register of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with section 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 24, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2020–21581 Filed 9–29–20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Day 8–10 Timeline Forecast Survey and Focus Groups; Correction**

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, Correction.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), published a notice in the **Federal Register** on 07/20/2020, 85 FR 43817, to allow for 60 days of public comment preceding submission to OMB for review and approval of the information collection for OMB Control Number 0648–0757. This notice serves as a correction to that **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: James A. Nelson, Jr., Development and Training Branch Chief at the Weather Prediction Center, NOAA/NWS/NCEP/WPC, 5830 University Research Court—College Park, MD 20740, (301) 683–1493, james.a.nelson@noaa.gov.

SUPPLEMENTARY INFORMATION:**Correction**

National Oceanic & Atmospheric Administration (NOAA) will not be renewing this collection. More

accurately, NOAA will submit a request to OMB to discontinue this collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-21631 Filed 9-29-20; 8:45 am]

BILLING CODE 3510-KE-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20-41]

Arms Sales Notification

Correction

In notice document 2020-18791, beginning on page 52576, in the issue of

Wednesday, August 26, 2020 the incorrect graphic was inadvertently published in error. The correct graphic for Transmittal No. 20-41 is corrected to appear as set forth below.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

July 9, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-41 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Belgium for defense articles and services estimated to cost \$33.3 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

[FR Doc. C1-2020-18791 Filed 9-29-20; 8:45 am]

BILLING CODE 1301-00-D

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20-31]

Arms Sales Notification

Correction

In notice document 2020-18786, beginning on page 52567, in the issue of

Wednesday, August 26, 2020 the incorrect graphic was inadvertently published in error. The correct graphic for Transmittal No. 20-31 is corrected to appear as set forth below.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

July 6, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-31 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Argentina for defense articles and services estimated to cost \$100 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Howell
Lieutenant General, USA
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

[FR Doc. C1-2020-18786 Filed 9-29-20; 8:45 am]

BILLING CODE 1301-00-D

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20-0J]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at karma.d.job.civ@mail.mil or (703) 697-8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20-0J with attached Policy Justification.

Dated: September 22, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

August 26, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 20-0J. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 17-12 of June 23, 2017.

Sincerely,

A handwritten signature in black ink that reads "Heidi H. Grant".

Heidi H. Grant
Director

Enclosures:

1. Transmittal

Transmittal No. 20-0J

Report of Enhancement or Upgrade of Sensitivity of Technology or Capability (Sec. 36(B)(5)(C), AECA)

(i) *Prospective Purchaser:* Government of Australia

(ii) Sec. 36(b)(1), AECA Transmittal No.: 17-12

Date: June 23, 2017

Military Department: Air Force

(iii) *Description:* On June 23, 2017, Congress was notified by Congressional certification transmittal number 17-12 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of up to five (5) Gulfstream G-550

aircraft modified to integrate Airborne Intelligence, Surveillance, Reconnaissance, and Electronic Warfare (AISREW) mission systems, Global Positioning System (GPS) capability, secure communications, aircraft defensive systems; spares, including whole life costs of airborne and ground segments; aircraft modification and integration; ground systems for data processing and crew training; ground support equipment; publications and technical data; U.S. Government and contractor engineering, technical and logistics support services; flight test and certification; and other related elements

of logistical and program support. The estimated total cost was \$1.3 billion. Major Defense Equipment (MDE) constituted \$.04 billion of this total.

This transmittal reports the inclusion of the following non-MDE items and services: Spares and repair/return parts; consumables and support equipment; publications and technical documentation; maintenance, training and training equipment; U.S. Government and contractor flight test and certification, aircraft modification and integration, engineering, technical and logistics support services; and other related elements of logistical and

program support. These additional items will result in an increase in non-MDE cost of \$500 million, causing a revised total cost for non-MDE of \$1.76 billion. Major Defense Equipment (MDE) will remain \$.04 billion. The total estimated case value will increase by \$500 million to \$1.8 billion.

(iv) *Significance*: The proposed articles and services will support Australia's efforts to modernize its Electronic Warfare support capability and increases interoperability between the U.S. Air Force and the Royal Australian Air Force (RAAF).

(v) *Justification*: This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a major Non-NATO Ally that is a key partner of the United States in ensuring peace and stability around the world.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

(vii) *Date Report Delivered to Congress*: August 26, 2020

[FR Doc. 2020-21632 Filed 9-29-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Notice of Investigation and Record Requests

AGENCY: Office of the General Counsel, Department of Education.

ACTION: Notice.

SUMMARY: The Department publishes a letter, dated September 15, 2020, notifying Binghamton University of an investigation and request for records and transcribed interviews.

FOR FURTHER INFORMATION CONTACT: Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6E300, Washington, DC 20202. Telephone: (202) 453-6339. Email: Patrick.Shaheen@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department publishes this letter, dated September 15, 2020, notifying Binghamton University of an investigation under 20 U.S.C. 1094 to determine if Binghamton's conduct related to events occurring between November 14 and November 19, 2019, as more particularly set forth in Appendix A, violated applicable statutory, regulatory, or contractual

provisions. The letter to Binghamton University is in Appendix A of this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Reed D. Rubinstein,

Principal Deputy General Counsel.

Appendix A

September 15, 2020

President Harvey Stenger SUNY-Binghamton, P.O. Box 6000, Binghamton, NY 13902-6000 via electronic mail

Re: Notice of 20 U.S.C. 1094 Investigation/ Request for Records and Transcribed Interviews/Binghamton University

Dear President Stenger:

The U.S. Department of Education ("Department") has become aware of facts suggesting representations made by Binghamton University ("Binghamton"), part of the State University of New York, promising, inter alia, institutional protection for free speech and free inquiry rights are misleading to students, parents, and consumers in the market for education credentials. Instead, there seems to be evidence suggesting Binghamton selectively applies its stated policies and procedures to discriminate against students based on the content of their speech and their decision to associate with groups such as the College Republicans and Young Americans for Freedom/Young America's Foundation ("YAF"). Consequently, the Department is opening an investigation to determine if Binghamton's conduct related to events occurring between November 14 and November 19, 2019, as more particularly set forth below, violated applicable statutory, regulatory, and/or contractual provisions.

The reported facts are as follows:

On November 14, 2019, beginning around 10:00 a.m., fewer than ten Binghamton

students who were members, associated with, or supporters of a recognized Binghamton University student group called "College Republicans" began "tabling" using two folding tables displaying fliers and other promotional materials in a common area of campus used to promote on-campus speeches, activities, and political causes. The College Republicans handed out fliers promoting a November 18, 2019, lecture by the prominent economist, Dr. Arthur Laffer. Other literature from a different organization supporting the Second Amendment but unrelated to the College Republicans was displayed on a nearby table. At approximately 2:00 p.m., approximately 200 persons surrounded the College Republicans and their tables, shouting threats and obscenities. They allegedly destroyed the College Republicans' materials and tables and attempted to chase them away. See Matthew Benninger, "Binghamton University says 'provocative' displays by political student organizations led to campus protest" (Nov. 18, 2019), <https://wbng.com/2019/11/18/binghamton-university-says-provocative-displays-by-political-student-organizations-led-to-campus-protest/>. Contemporaneous video footage demonstrates the University's police did not impede or prevent the conspirators' violence and intimidation. See https://www.youtube.com/watch?v=_X2-96gt9MI.¹

Preliminary information suggests these persons were acting in concert pursuant to a conspiracy. Contrary to law, the express object of this conspiracy was to injure, oppress, threaten, or intimidate the College Republicans in the free exercise or enjoyment of their First Amendment rights. See 18 U.S.C. 241; 42 U.S.C. 1985(3). Reported social media messages confirming the conspiracy's purpose included, inter alia, "[y]eah there's not that many but f— em [sic] up anyways" and "[t]oday on the spine Trump supporters are actively advocating for the Trump administration and gun violence. Join us at 2 as we disrupt this disgusting space that Binghamton has allowed students to create and protect the racism, homophobia, and xenophobia that has erupted from Trump and his supporters". See Editorial, "To protect free speech, SUNY Binghamton must throw the book at these

¹ On November 14, 2019, less than thirty minutes before the College Republicans began tabling, a shooter at a California high school killed two fellow students and injured three others before killing himself. On November 18, Binghamton's Vice President for Student Affairs, Brian Rose, imputed knowledge of this shooting to the College Republicans without any evidence the College Republicans knew or could have known of it at the time they commenced their protected activity. He said: "The [College Republicans] display included provocative posters with gun imagery, this being the same day as the Saugus High School shooting [so] the [College Republicans] intended to be provocative." See Benninger, supra <https://wbng.com/2019/11/18/binghamton-university-says-provocative-displays-by-political-student-organizations-led-to-campus-protest/>. The Department is concerned because Rose's statement seemingly contextualizes the police's failure to stop the threats, intimidation, and violence, and provides reason to believe Binghamton may harbor systemic bias and animus toward students with Republican or conservative political views.

bullies" (Nov. 19, 2019), <https://nypost.com/2019/11/19/to-protect-free-speech-suny-binghamton-must-throw-the-book-at-these-bullies/>. These social media strongly suggest that many of the conspirators agreed to injure, oppress, threaten, or intimidate the College Republicans because of and/or to prevent their exercise of constitutional rights, and many of the persons who acted pursuant to that conspiracy, were Binghamton students.

On November 15, 2019, YAF's General Counsel contacted Binghamton attorney Barbara Scarlett seeking assurances Binghamton would protect students' constitutional rights to freedom of assembly and association during an upcoming lecture by Dr. Arthur Laffer. Scarlett refused to provide any such assurances. Consequently, YAF hired two protective agents from Pinkerton Consulting & Investigations, Inc. ("Pinkerton") to protect Dr. Laffer.

On November 18, 2019, Dr. Laffer was scheduled to give his lecture.

On that day, Vice President Rose issued a statement in his official capacity blaming College Republicans and "another group known as Turning Point" for displaying "provocative" posters and intending to be "provocative." He said Binghamton's response "was and will be guided by principles and values related to safety, equity, free expression and reason." He said the conspirators who pulled down the College Republicans' tables "acted in a manner that may have violated University rules. In the context of the incident and in keeping with the principles and values noted above, the University did not seek to identify or charge any protesters." (Emphasis added.) He said, apparently referring to criticism regarding Binghamton's failure to protect a student political organization duly recognized by Binghamton and their First Amendment rights from conspiratorial violence and intimidation: "We acknowledge the larger political context in our country that is polarizing our society. It is unfortunate that interests external to the campus have seized upon this incident and attempted to mischaracterize it to feed their own narrative and to attempt to influence our response. We will not be responding to those external voices or altering our approach as a result of external pressure." (Emphasis added.) Rose never mentioned the First Amendment. See "A message from Vice President for Student Affairs Brian Rose" (Nov. 18, 2019), <https://www.binghamton.edu/president/statements.html>.

Also, on that day, representatives of the College Republicans and YAF met with Binghamton police and administrative personnel to discuss lecture security. The police advised of social media posts threatening lecture disruptions (widely-published images included those of Dr. Laffer receiving the Medal of Freedom from President Trump, with black boxes blocking the eyes of both Dr. Laffer and the President, and calling for protesters to "Come out and support BING PLOT, gathering voices to speak out against College republicans [sic] and Turning Point USA (angry and middle finger emojis) come out to lecture hall 8!!!at

6:45pm to hear the LIES they are feeding republicans !!!!we must put an end to this clownery. See you there (more emojis))." Another social media post with the same images included the message "COLLEGE REPUBLICAN AND TURNING POINT [sic] HAVE INVITED ARTHUR LAFFER, AN ECONOMIST/LIAR WHOSE THEORIES HAVE BEEN USED TO JUSTIFY TAX CUTS FOR THE RICH, AND RAISES ON THE POOR. F— THIS & THEM." The post was captioned "LET'S SHOW UP, SPEAK OUT, AND DISRUPT." These conspiratorial threats to disrupt the lecture and violate "republicans" and "TURNING POINT" members' civil rights included threats by the Binghamton, New York "Progressive [sic] Leaders of Tomorrow ("BING PLOT")."²

Binghamton told the College Republicans and YAF the lecture was being moved to a different hall to provide better egress if university police decided it was necessary to remove Dr. Laffer from the lecture. However, notwithstanding clear evidence of a conspiracy by persons with a history of violence and lawlessness to violate the civil rights of College Republicans' and YAF's members,

Binghamton informed the College Republicans and YAF it was also providing an adjacent room, connected by a doorway to the lecture hall, where "protesters" would be allowed to gather.

Dr. Laffer arrived at a nearby airport en route to the lecture. Upon disembarking from his plane, he and two aides were intercepted by two university police officers at the airport.³ They informed him of their security concerns for the event, discussed social media posts threatening to disrupt the event, and asked him to abandon his speaking commitment and return to his plane. Dr. Laffer refused and affirmed his commitment to give the lecture as planned.

At approximately 6:30 p.m., roughly an hour before the lecture, Binghamton officials informed the Pinkerton agents that they expected Dr. Laffer's lecture to be disrupted by PLOT and the "College Progressives." University police officers informed the agents that if the anticipated disruption neared the podium, the Pinkerton agents would be ordered to remove Dr. Laffer from the lecture venue. The police officers also instructed Dr.

² BING PLOT is an "anti-capitalist", "radical", and violent organization aiming to "create a culture of high-quality accomplices [sic] willing to put their bodies . . . on the line in the pursuit of justice." See <https://www.facebook.com/BingPLOT/>. For example, on October 14, 2019, PLOT halted Binghamton's Columbus Day Parade and several of its members were arrested and criminally charged. See Amy Hogan, "Binghamton Mayor Condemns Community Group PLOT, Challenges Other Elected Officials To Do The Same" (Oct. 15, 2019), <http://www.wicz.com/story/41184593/inghamton-mayor-condemns-community-group-plot-challenges-other-elected-officials-to-do-the-sa>.

³ Customarily, university officials greet visiting dignitaries like Dr. Laffer upon arrival at the university. On this occasion, unique in Dr. Laffer's decades of lecturing experiences at American universities, not a single Binghamton administrator or faculty member welcomed him publicly or privately. Since the event, not one Binghamton (or other SUNY) administrator or faculty member has communicated publicly or privately with Dr. Laffer.

Laffer's driver to remain with the vehicle to facilitate Dr. Laffer's escape if the anticipated disruptions occurred.

Shortly thereafter, the doors opened to the lecture hall. Hundreds of students and non-students filled the hall, including many conspirators. Dozens wore masks and clothing with indicia of PLOT affiliation, including armbands, pins, and red shirts. Conspirators remained standing, blocked access to seating, and stood in the aisles. Facilitated by Binghamton, the room adjacent to the lecture hall also filled with conspirators. Upon information and belief, the object, purpose, and intention of the conspirators' agreement were combined action to deny and intimidate Dr. Laffer, YAF members, College Republican members, and other community members in the exercise of their First Amendment and other constitutional rights. Also, upon information and belief, Binghamton had both actual and constructive knowledge of the wrongs conspired to be done and about to be committed. It also had the power to prevent or aid in preventing the commission of the same, yet it appears to have neglected or refused so to do. See 42 U.S.C. 1986.

YAF and the College Republicans asked for assistance from the University police officers in getting attendees seated. A university police officer made a single announcement about the fire code and requested that attendees be seated. Binghamton took no further action to enforce the request or to inform the crowd that disruptions of Dr. Laffer's lecture would be inappropriate, a violation of the University's policies, illegal, or the subject of University discipline. While many officers were present, they remained standing against the walls of the room—making no effort to bring order to the room.

At 7:30 p.m., the College Republicans' President introduced Dr. Laffer, first announcing to all attendees that all comments or questions should occur at the end of Dr. Laffer's lecture, specifically welcoming the comments of those who may wish to express disagreement. Dr. Laffer went to the podium and, within seconds, conspirators in the second row began shouting to prevent him from speaking. One emerged from the side of the hall to hand a bullhorn to the shouting protester, thereby preventing Dr. Laffer from being heard. Others joined in the hostile display, drowning out Dr. Laffer and denying other students the right to hear his views. See https://www.youtube.com/watch?v=eTqlmDar_hg.

Instead of making a good faith effort to restore order to allow the lecture to continue, university police ordered Dr. Laffer's removal by the Pinkerton agents. This ended the lecture, allowing the conspirators to unlawfully deny and intimidate Dr. Laffer and the students who came to listen in the exercise of their First Amendment rights. Only after the protester with the bullhorn fell from the chair on which he/she was standing did the university police approach the leading protester around whom other protesters then formed a human barricade. Conspirators from the adjacent room (provided by Binghamton to facilitate their activities) flooded the lecture hall and joined

the disruption. For approximately an hour, the protesters continued to occupy the lecture hall.

On November 19, 2019, the College Republicans received email notification that its status as a chartered student organization was being suspended for failure to obtain proper approval prior to its November 14, 2019, tabling.

There is no record of Binghamton investigating, disciplining, or imposing any penalty on or sanctioning any other students or student organization involved in any of the above-described events.

In exchange for the annual payment of approximately at least \$10,201.00 in tuition and fees, Binghamton promises students that they will have the freedom to speak, learn, challenge, and dissent. These promises are not merely aspirational goals but rather are representations to students, parents, and consumers intended to create reliance and induce attendance. Binghamton's problematic representations include but are not limited to:

- Binghamton fosters "open dialogue." See <https://www.binghamton.edu/about/mission-vision-values.html#>.

- Binghamton requires all members of the University community to conduct themselves "lawfully, maturely and responsibly, and to share the responsibility of maintaining standards of behavior that are essential to the smooth functioning of the institution." See <https://www.binghamton.edu/student-handbook/policies/index.html>

- The "full exercise of First Amendment rights is encouraged and protected." See <https://www.binghamton.edu/student-handbook/policies/index.html>.

- "Conduct that interferes with or threatens the operation of the University or the rights of others, either in or out of the classroom, is not condoned". See <https://www.binghamton.edu/student-handbook/policies/index.html>.

- "Every member of the University community has a right to feel secure in person and property and has the responsibility to respect and protect the rights of others." See <https://www.binghamton.edu/student-handbook/policies/index.html>.

- Dissent and demonstrations must occur "in an orderly and peaceful manner." See <https://www.binghamton.edu/student-handbook/policies/demonstrations.html#~text=Students%20are%20free%20to%20voice,normal%20functioning%20of%20the%20University.>

- Students must "conduct themselves in a manner that supports and respects the rights of others". See <https://www.binghamton.edu/student-handbook/pdfs/accessible-version-of-student-code-of-conduct-2020-21.pdf>.

- Binghamton demands "respectful discourse, allowing all members to express themselves in a manner that enables others to feel personally safe and emotionally secure both in and out of the classroom." See <https://www.binghamton.edu/student-handbook/pdfs/accessible-version-of-student-code-of-conduct-2020-21.pdf>.

- Binghamton promises "[t]he safety of our students and the entire campus community" is the "highest priority" and its police "are

fully empowered, state law enforcement officers trained to address the unique needs of the University campus" with "comprehensive programs and procedures to help every member of the University community remain safe." See <https://www.binghamton.edu/about/campus-safety.html>.

- Binghamton has generally applicable conduct rules, and these rules will be enforced consistently for "any conduct system to be credible, consistency must be a central element." Specifically, "Rule #8" provides "[e]ndangering, threatening, causing, or attempting to cause physical harm to any person or causing reasonable apprehension of such harm" and may lead to sanctions including a period of disciplinary/final probation, suspension or expulsion, educational intervention(s), and a loss of housing. "Rule #19" provides "disorderly conduct," which includes disrupting a classroom and blocking access to a roadway, office, or building, may lead to sanctions based on "the level of disruption, the impact on the learning environment, the duration of the disruption, and safety concerns." See https://www.binghamton.edu/student-conduct/resources/1920_sanctioning_guidelines.pdf.

- Binghamton is "absolutely committed to upholding free speech" and "will not tolerate efforts to disrupt or shut down gatherings where academic and personal freedoms are being exercised." "An end-of-the-year message from President Harvey Stenger", (Dec. 23, 2019) <https://www.binghamton.edu/president/statements.html>

- "As an institution of higher education, freedom of speech is fundamental to our core mission; academic inquiry and the exchange of ideas rest on the principle that all have a right to express their beliefs." "A message from President Stenger" (Nov. 15, 2019) <https://www.binghamton.edu/president/statements.html> (*emphasis in original*).

The facts regarding Binghamton's conduct during the subject time are not fully developed. Therefore, it is unclear whether Binghamton's actions and omissions were due to management failures; political bias and animus against College Republicans, YAF, and political conservatives; or other factors. Regardless, those actions and omissions suggest serious reason for the Department to be concerned that Binghamton's many representations about free speech and student conduct to students, parents, and consumers in the market for education certificates may be false, erroneous, or misleading, in violation of 20 U.S.C. 1094(c)(3)(B) and 34 CFR 668.71(c). Therefore, the Department's Office of Postsecondary Education, in consultation with the Department's Office of the General Counsel, is opening this investigation.

As you are aware, the Secretary may commence a fine proceeding, among other measures, if the Department ultimately concludes Binghamton has made substantial misrepresentations about the nature of its educational program. The Department is aware of the challenges posed by COVID-19 to institutions of higher education. However, the critical gravity of Binghamton's representations compels the Department to

move this investigation forward with all appropriate speed.

The Department requests Binghamton produce the requested records, make available the identified employees for transcribed interviews under oath, and answer the specified questions in accordance with the deadlines specified below. See 20 U.S.C. 1094(a)(17); 20 U.S.C. 1097a; U.S. v. Morton Salt, 338 U.S. 632, 642-63 (1952); U.S. v. Powell, 379 U.S. 48, 57 (1964); Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 216 (1946); see also U.S. Dep't of Educ., Notice of Proposed Rulemaking, 85 FR 3190, 3213 n.137 (Jan. 17, 2020) ("The Department notes that public and private institutions also may be held accountable to the Department for any substantial misrepresentation under the Department's borrower defense to repayment regulations"); Standard Form 424B; Executive Order 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, 84 FR 11401 (Mar. 21, 2019); and Final Rule: Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, available at https://www2.ed.gov/about/offices/list/ope/freeinquiryfinalrule_unofficialversion09092020.pdf (Sept. 9, 2020). Please be advised the Department considers your answers to these requests to be matters within the jurisdiction of the executive branch of the Government of the United States for the purposes of 18 U.S.C. 1001. Accordingly, Binghamton should make every effort to answer our requests fully and completely.

I. Records Production

Please produce the following records within twenty-one (21) calendar days:

1. All records concerning, regarding, referring to, or relating to the events of November 14 through 19, 2019, as described above. The relevant time for this request is January 1, 2019 to the present.

2. All records concerning, regarding, referring to, or relating to the content of and statements made in "A message from Vice President for Student Affairs Brian Rose" (Nov. 18, 2019) <https://www.binghamton.edu/president/statements.html> and "A message from President Stenger" (Nov. 15, 2019) <https://www.binghamton.edu/president/statements.html>. The relevant time for this request is November 13, 2019 to the present.

3. All records concerning, regarding, referring to, or relating to actual or potential discipline of any student and/or any sanction of an organization due to or arising out of any statement, action, or conduct during or related to the events of November 14 through 19, 2019, described above. The relevant time for this request is November 14, 2019, to the present.

4. All records concerning, regarding, or relating to PLOT (a.k.a. Progressive Leaders of Tomorrow), the College Republicans, and Young Americans for Freedom/Young American's Foundation. The relevant time for this request is June 1, 2016, to the present.

5. All records concerning, regarding, or relating to Jeffrey Coghlan. The relevant time

for this request is November 1, 2019, to the present.

6. All records concerning, regarding, or relating to John Restuccia. The relevant time for this request is June 1, 2016, to the present.

7. All records concerning, regarding, or relating to Jon Lizak. The relevant time for this request is June 1, 2016, to the present.

8. All records concerning, referencing, or relating to the Stipulation of Settlement and Discontinuance Pursuant to Rule 41(A), Center for Bio-Ethical Reform v. Black, 1:13-cv-00581-RJA-HBS (W.D.N.Y. June 2, 2017), ECF No. 30 (Exhibit A).

9. All records of the University police concerning, referring, or relating to Dr. Laffer, College Republicans, Young Americans for Freedom/Young America's Foundation, College Progressives, PLOT, Jeffrey Coghlan, John Restuccia, Jon Lizak, Pinkerton Consulting & Investigations Inc. (a.k.a. Pinkerton), and the events of November 14–19, 2019, as described above. The relevant time frame for this request is January 1, 2018, to the present.

10. A true copy of Binghamton's safety plan in support of Dr. Laffer's lecture and all records concerning, regarding, or relating thereto. The relevant time frame for this request is November 1, 2019, to the present.

11. A list of Binghamton employees who determined (a) Dr. Laffer's lecture should be moved to a larger hall, (b) that the adjacent hall would be provided for those opposing Dr. Laffer's lecture, and (c) that Dr. Laffer would be ordered removed if his lecture was disrupted by protesters.

12. A list of all Binghamton employees responsible for or involved in Binghamton's decision not to seek to identify or charge any "protesters" involved in the events of November 14, 2019.

13. All records about, concerning, or noting meetings with University officials and University police officers about the College Republicans, Young Americans for Freedom/Young America's Foundation, College Progressives, or PLOT, including all records shared, distributed, or discussed at such meetings. The relevant time for this request is June 1, 2016, to the present.

14. All records of any student organization, including a chartered student organization, that was suspended, disciplined, or otherwise reprimanded. The relevant time frame for this request is June 1, 2016, to the present.

15. All records of any policies or statements regarding the provision of security at events organized by any student organizations, including chartered student organizations. The relevant time frame for this request is January 1, 2018 to the present.

Your production should utilize the following procedures:

- For purposes of this request, records shall be produced in their entirety, without abbreviation, modification, or redaction, including all attachments and materials affixed thereto.

- All records should be produced in the same order as they are kept or maintained in the ordinary course, or the records should be organized and labeled to correspond to the categories of the records requested.

- If the request cannot be complied with in full, it shall be complied with to the extent

possible, with an explanation of why full compliance is not possible. Any document withheld in whole or in part due to privilege, or for any other reason, shall be identified on a privilege log submitted with response to this request. The log shall state the date of the document, its author, his or her occupation and employer, all recipients, the title and/or subject matter, the privilege claimed, and a brief explanation of the basis of the claimed privilege.

- Records shall be produced in electronic form instead of paper productions. Records shall be delivered as delimited text with images and native files. Alternatively, all records derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable PDF format. Spreadsheets shall also be provided in their native format. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in PDF format along with the document it is contained in or to which it is attached.

- Other than native files produced along with TIF images, records should be sequentially numerically indexed (a.k.a. Bates stamping) and reference should be made to the request to which the records are responsive (e.g., Item 1). All files produced shall be numerically identified within the range that the file contains (e.g., University-00001-University-000050).

- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata (other than to numerically index, as described above). Electronic records should be produced in native format. For emails, please place responses in one .pst file per employee. For .pdf files, please provide searchable file format and not image file format.

- All email searches should be conducted by the agency's information technology department, or its equivalent, and not by the individuals whose records are being searched. Please provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.

- Should you have any questions about the method or format of production please contact the undersigned to coordinate.

As used in this Notice of Investigation and Records Request:

"Record" means all recorded information, regardless of form or characteristics, made or received, and including metadata, such as email and other electronic communication, social media posts, texts, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, network access

information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristic

II. Transcribed Interviews

Please make the following individuals available for transcribed interviews:

1. President Harvey Stenger
2. Vice President for Student Affairs Brian Rose
3. Chief of Police John Pelletier
4. A duly authorized corporate designee to testify regarding Binghamton's (a) representations, as specified above, and (b) the contents and application of its policies or practices regarding free speech, free inquiry, and the First and Second Amendments to the U.S. Constitution.

5. The university police officers who appeared at the airport to meet Dr. Laffer on November 18, 2019.

6. The university police officers in command (including onsite command) of the security effort relating to Dr. Laffer's lecture.

7. The university police officers in command (including onsite command) regarding the events of November 14, 2019.

If Binghamton asserts attorney-client or attorney-work product privilege for a given record, then it must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the claim's validity. Please note that no other privileges apply here. Your record and data preservation obligations are outlined at Exhibit B.

This investigation will be conducted by the Department's Office of the General Counsel with support from the Office of Postsecondary Education. Your legal counsel will be contacted by Paul R. Moore, the Department's Chief Investigative Counsel, to schedule the transcribed interviews, and by the Office of the General Counsel's electronic discovery attorney, Kevin D. Slupe, to arrange for records transmission. Additionally, please be advised that by copy of this letter we are referring Binghamton to the U.S. Department of Justice's Civil Rights Division for such additional investigation and action as may be appropriate.

Thank you in advance for your cooperation.

Sincerely yours,
Robert L. King
Assistant Secretary, Office of Postsecondary Education
Enclosure (Exhibits A and B)

cc: John B. Daukas, Principal Deputy Assistant Attorney General Civil Rights Division, U.S. Department of Justice
 Reed D. Rubinstein, Principal Deputy General Counsel delegated the Authority and Duties of the General Counsel
 Paul R. Moore, Chief Investigative Counsel
 Kevin D. Slupe, Special Counsel Chancellor
 Jim Malatras
 The State University of New York
 [FR Doc. 2020-21649 Filed 9-29-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Guidance Regarding Department of Education Grants and Executive Order 13798

AGENCY: Office of the General Counsel, Department of Education.

ACTION: Notice.

SUMMARY: The Department publishes this guidance, dated August 7, 2020, pursuant to a memorandum from the Office of Management and Budget (OMB) directing all grant administering agencies to publish policies detailing how they will administer Federal Grants in compliance with Executive Order 13798, titled “Promoting Free Speech and Religious Liberty,” the Attorney General’s October 6, 2017 Memorandum on Federal Law Protections for Religious Liberty, and OMB’s Memorandum.

FOR FURTHER INFORMATION CONTACT: Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6E300, Washington, DC 20202. Telephone: (202) 453-6339. Email: Patrick.Shaheen@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department issues this guidance to comply with the law and to protect religious liberty in the administration of its grant programs. The guidance details the ways in which the Department’s specific regulations protect the religious freedoms of institutions and individuals and introduces a process by which both faith-based organizations and individuals can inform the Department of a burden or potential burden on religious exercise under the Religious Freedom Restoration Act (RFRA). The guidance is in the Appendix of this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Reed D. Rubinstein,

Principal Deputy General Counsel delegated the authority to perform the functions and duties of the General Counsel.

Appendix—Guidance Regarding Department of Education Grants and Executive Order 13798

I. Purpose and Background

On May 4, 2017, the President signed *Executive Order 13798*, titled “Promoting Free Speech and Religious Liberty.”¹ This decree, among other things, directed the Attorney General to provide guidance to Federal agencies on the requirements of Federal laws and policies protecting religious liberty. Accordingly, on October 6, 2017, the Attorney General issued a memorandum advising agencies on such laws and policies, including how they apply to the awarding of grants (Attorney General Memorandum).² Subsequently, the Office of Management and Budget (OMB) issued its own guidance on January 16, 2020 (OMB Memorandum), directing all grant administering agencies “within 120 days of the date of this Memorandum . . . [to] publish policies detailing how they will administer Federal grants in compliance with E.O. 13798, the Attorney General’s memorandum, and this Memorandum.”³

¹ Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

² Exec. Order No. 13798, 82 FR 21675 (May 4, 2017).

³ Jeff Sessions, *Federal Law Protections for Religious Liberty*, Memorandum for All Executive Departments and Agencies (Oct. 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download>.

⁴ Office of Mgmt. & Budget, Exec. Office of the President, M-20-09, *Guidance Regarding Federal Grants and Executive Order 13798* (January 16, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/01/M-20-09.pdf>.

The OMB Memorandum and the Attorney General’s Memorandum remind agencies that religious organizations are entitled to compete on equal footing with secular organizations for Federal financial assistance, as clarified most recently by the Supreme Court of the United States in *Espinoza v. Montana Department of Revenue*⁴ and *Trinity Lutheran Church of Columbia, Inc. v. Comer*.⁵ In particular, rules or grant terms that “expressly discriminate[] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character” violate the Free Exercise Clause, unless the government can prove that such rules or terms are the least restrictive means of achieving a compelling government interest.⁶ This is unconstitutional because it forces a religious institution to choose between “participat[ing] in an otherwise available benefit program or remain[ing] a religious institution.”⁷ As a result, Department grants must be available to all qualified organizations, regardless of their religious or non-religious character, and to all eligible individuals, regardless of their religion.

Furthermore, all agency actions—including, but not limited to, agency rules and grant terms—that impose a substantial burden on an organization or individual’s exercise of religion violate the Religious Freedom Restoration Act (RFRA)⁸ if they do not survive strict scrutiny.⁹ RFRA thus must inform all agency rulemaking.¹⁰

The Department of Education (ED or Department) issues this guidance to comply with the law and to protect religious liberty in the administration of its grant programs. The sections that follow detail the ways in which the Department’s specific regulations¹¹ protect the religious freedoms of institutions and individuals, the process by which both faith-based organizations and individuals can inform the Department of a burden or potential burden on religious exercise under RFRA, and the role within the Department that the Center for Faith and Opportunity Initiatives plays as a resource on issues of religious liberty.

II. Equal Treatment of Religious Organizations and Students in Department of Education Programs

a. Equal Participation of Religious Organizations

The Free Exercise Clause, Supreme Court jurisprudence, and Federal grant regulations

⁴ *Espinoza v. Mont. Dep’t of Revenue*, No. 18-1195 (U.S. June 30, 2020).

⁵ *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

⁶ *Id.* at 2021.

⁷ *Id.* at 2021-22.

⁸ 42 U.S.C. 2000bb, *et. seq.*

⁹ *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, No. 19-431, slip op. at 7 (U.S. July 8, 2020).

¹⁰ *See id.* at 21-22.

¹¹ Note that amendments to the regulations at 34 CFR parts 75, 76, 106, 606, 607, 608, and 609, as well as 2 CFR part 3474 have been proposed, as announced in the notice of proposed rulemaking issued by the Office of the Secretary. *See* 85 FR 3190 (January 17, 2020).

prohibiting discrimination¹² require that religious organizations be equally eligible to participate in ED-administered programs as their secular counterparts.

i. Grant Applications and Awards

Under Department regulations, faith-based organizations are eligible to apply for and receive both direct grants and subgrants under a Department program on the same basis as any other organization, with respect to programs for which such other organizations are eligible.¹³ Faith-based organizations are further eligible, on the same basis as any other organization, to contract with grantees and subgrantees, including States, with respect to contracts for which such other organizations are eligible.¹⁴ The Department, its grantees, and their subgrantees—including States and local units of government—must not discriminate against an organization on the basis of the organization's religious character or affiliation.¹⁵

Furthermore, decisions about awards of Federal financial assistance must be free from political interference, or even the appearance of such interference.¹⁶ Award decisions must be made on the basis of merit, not on the basis of the organization's religion, religious belief, or the lack thereof.¹⁷ ED must ensure that decisions are made fairly based on the substance of the proposals.

The following are some examples of the ways in which the Department administers its grant programs in accordance with these principles:

- Organizations that apply for and are qualified to become service providers under the Department's Upward Bound program, or any other Department program, must not be excluded from recognition as an available provider on account of their religious character or affiliation and must be included on provider lists furnished to participants.

- The Department may not prevent pervasively sectarian institutions of higher education from serving as fiscal agents in the Gaining Early Awareness and Readiness for Undergraduate Programs program (GEAR UP), which is reflected in the Department's recently promulgated Faith-Based Institutions and TEACH Grants Final Rule and is a change from prior regulations.¹⁸

- The Department is working towards publishing a final rule regarding the equal participation of faith-based organizations in Department programs and activities that ensures, among other things, that faith-based social service providers are treated the same

as their secular counterparts and that religious student organizations on college campuses are treated the same as their secular counterparts.¹⁹

ii. Ongoing Operations

Religious organizations receiving Federal financial assistance under a Department program must comply with program-specific legislation and regulations, but may continue to carry out their missions and maintain their religious character. This autonomy includes, among other things, the right to use the organizations' facilities to provide ED-supported services without removing or altering religious art, icons, scriptures, or other religious symbols, the right to select board members and otherwise govern themselves according to their religious character, and the right to include religious references in their mission statements and other chartering or governing documents.²⁰

At the same time, direct Federal financial assistance may not be used for worship, religious instruction, or proselytization.²¹ Attendance or participation in any explicitly religious activities by beneficiaries of the programs and services supported by the grant or subgrant must be voluntary.²²

This limit on explicitly religious activities, however, does not apply to a faith-based organization that provides services to a beneficiary under a program supported only by indirect Federal financial assistance.²³ Indirect financial assistance means that the choice of a service provider under a program of the Department is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment.²⁴

iii. The Impact of Blaine Amendments

Even when no Federal regulation or grant term penalizes or disqualifies grant applicants from participation based on their religious character, some States or grantees may still be engaging in this type of unconstitutional conduct pursuant to so-called Blaine Amendments or other "no aid" clauses in a State constitution. These are provisions that go beyond the U.S. Constitution and prevent State taxpayers from providing any aid to religious organizations. Blaine Amendments are named after the proponent of a failed constitutional amendment proposing the same restrictions to the U.S. Constitution. This proposal sprung from prejudice against Roman Catholics, and such provisions have since been condemned by the Supreme Court as rooted in bigotry:

Finally, hostility to aid to pervasively sectarian schools has a shameful pedigree that we do not hesitate to disavow. Cf. *Chicago v. Morales*, 527 U.S. 41, 53–54, n. 20, 119 S. Ct. 1849, 144 L.Ed.2d 67 (1999) (plurality opinion). Although the dissent professes concern for "the implied exclusion

of the less favored," *post*, at 2572, the exclusion of pervasively sectarian schools from government-aid programs is just that, particularly given the history of such exclusion. Opposition to aid to "sectarian" schools acquired prominence in the 1870's with Congress' consideration (and near passage) of the Blaine Amendment, which would have amended the [U.S.] Constitution to bar any aid to sectarian institutions. Consideration of the amendment arose at a time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that "sectarian" was code for "Catholic." See generally Green,

The Blaine Amendment Reconsidered, 36 a.m. J. Legal Hist. 38 (1992). Notwithstanding its history, of course, "sectarian" could, on its face, describe the school of any religious sect, but the Court eliminated this possibility of confusion when, in *Hunt v. McNair*, 413 U.S., at 743, 93 S. Ct. 2868, it coined the term "pervasively sectarian"—a term which, at that time, could be applied almost exclusively to Catholic parochial schools and which even today's dissent exemplifies chiefly by reference to such schools. See *post*, at 2582, 2592–2593 (opinion of SOUTER, J.).

In short, nothing in the Establishment Clause requires the exclusion of pervasively sectarian schools from otherwise permissible aid programs, and other doctrines of this Court bar it. This doctrine, born of bigotry, should be buried now.²⁵

Accordingly, the Supreme Court has repeatedly struck down the application of Blaine Amendments to religious educational programs as violative of the Free Exercise Clause.²⁶ Most recently, in *Espinoza v. Montana Department of Revenue*, the Supreme Court found that the Free Exercise Clause prohibited the application of a State Blaine Amendment that "bar[red] religious schools from public benefits solely because of the religious character of the schools."²⁷ The Court explained that the State was punishing the free exercise of religion "by disqualifying the religious from government aid[.]"²⁸ The no-aid provision did not survive strict scrutiny because, among other reasons, "[a] State's interest 'in achieving greater separation of church and State than is already ensured under the Establishment Clause . . . is limited by the Free Exercise Clause.'" ²⁹

A State's application of its Blaine Amendment to prevent religious educational institutions and faith-based organizations from participating in Department programs violates the Free Exercise Clause, the precedents the Supreme Court established in *Trinity Lutheran* and *Espinoza*, and Department regulations regarding discrimination. Consequently, States that use Blaine Amendments as a basis to deny faith-based organizations contracts or grants under Department regulations will be in violation of

¹² 2 CFR 200.300 (explaining that the Department must ensure that it expends Federal funds "in full accordance with U.S. statutory and public policy requirements," including prohibiting discrimination).

¹³ 34 CFR 75.52(a)(1); 34 CFR 76.52(a)(1).

¹⁴ 2 CFR 3474.15(b)(1).

¹⁵ 34 CFR 75.52(a)(2); 34 CFR 76.52(a)(2); 2 CFR 3474.15(b)(2).

¹⁶ *Id.*

¹⁷ 34 CFR 75.52(a)(2); 34 CFR 76.52(a)(2).

¹⁸ 84 FR 67787 (proposed Dec. 11, 2019) (codified at 34 CFR 694.10). The Department notes that the unofficial version of this rule was released on July 1, 2020, but the final rule will not go into effect until July 1, 2021.

¹⁹ 85 FR 3190 (January 17, 2020) (proposed rule).

²⁰ 2 CFR 3474.15(e)(2)(iii)–(v).

²¹ 34 CFR 75.532; 34 CFR 76.532.

²² 34 CFR 75.52(c)(1); 34 CFR 76.52(c)(1).

²³ 34 CFR 75.52(c)(2); 34 CFR 76.52(c)(2); 2 CFR 3474.15(b)(2).

²⁴ 34 CFR 75.52(c)(3)(ii); 34 CFR 76.52(c)(3)(ii).

²⁵ *Mitchell v. Helms*, 530 U.S. 793, 828–29 (2000).

²⁶ See, e.g., *Trinity Lutheran*, 137 S. Ct. at 2021.

²⁷ *Espinoza*, slip op. at 9.

²⁸ *Id.* at 11.

²⁹ *Espinoza*, slip op. at 18 (quoting *Trinity Lutheran*, 137 S. Ct. at 2024 (quoting *Widmar v. Vincent*, 454 U.S. 263, 276 (1981))).

Department regulations against discrimination on the basis of an organization's religious character or affiliation.³⁰

The Department will take all appropriate action, in a manner consistent with applicable law, to ensure that States refrain from this kind of discriminatory conduct in the administration of Federal grants. Such action may include, but is not limited to, utilizing the risk mitigation provisions set forth in 2 CFR 200.207 and the enforcement provisions set forth in 2 CFR 200.338, as appropriate.

b. Equal Treatment of Students, Borrowers, and Beneficiaries

Students and/or borrowers seeking to participate in Department loan programs and beneficiaries seeking to participate in Department social service programs may not be penalized or singled out for disadvantages on the basis of religion.

i. Loan Programs

The Department must administer its loan programs without burdening otherwise eligible individuals because of their membership in religious orders, their employment at faith-based organizations, or their status as full-time volunteers at organizations engaging in inherently religious activities. For example:

- Members of religious orders pursuing a course of study in an institution of higher education are eligible for certain Federal loans on the same basis as other eligible individuals.³¹

- Borrowers who serve as full-time volunteers in tax-exempt organizations and engage in inherently religious activities are eligible to defer repayment of certain Federal loans on the same basis as other eligible individuals.³²

- Borrowers who voluntarily choose to work for non-profit employers that engage in inherently religious activities are eligible for the public service loan forgiveness program on the same basis as other eligible individuals.³³

ii. Social Service Programs

An organization that contracts with a grantee or subgrantee, including a State, may not discriminate against a beneficiary or prospective beneficiary in the provision of program goods or services on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or

participate in a religious practice.³⁴ However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.³⁵

c. Application to State and Local Funds

If a State, grantee, or subgrantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement Federally funded activities, the State or subgrantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement.³⁶ However, if the additional funds are commingled, the Department's regulations and policies regarding religious liberty apply to all of the commingled funds.³⁷

III. The Effect of the Religious Freedom Restoration Act on Recipients of ED Financial Assistance

a. Background

"RFRA 'provide[s] very broad protection for religious liberty.'" ³⁸ In 1993, Congress enacted RFRA in response to the Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*.³⁹ *Smith* held that a religion-neutral and generally applicable law need not be justified by a compelling governmental interest, even if such law incidentally affects religious practice.⁴⁰ Congress sought to undo the damage to religious liberty resulting from *Smith* and ensure that the government satisfies an "exceptionally demanding" ⁴¹ standard before substantially burdening religious exercise. Under RFRA, "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," ⁴² unless the Government "demonstrates that application of the burden to the [organization] — (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." ⁴³ RFRA thus mandates strict scrutiny of any Federal law that substantially burdens the exercise of religion, even if the burden is incidental to the application of a religion-neutral rule.

Congress expressly applied RFRA to all Federal law, statutory or otherwise, whether adopted before or after its enactment.⁴⁴ RFRA

therefore applies to all laws governing ED programs, including but not limited to non-discrimination laws⁴⁵ such as Title IX of the Education Amendments Act of 1972,⁴⁶ the Family Educational Rights and Privacy Act (FERPA), Title I of the Elementary and Secondary Education Act of 1965 (ESEA), and the Higher Education Act (HEA).⁴⁷ RFRA further applies to all actions by ED, including rulemaking, adjudication, or other enforcement actions, and grant or contract distribution and administration.⁴⁸

Under RFRA, the term "exercise of religion" does not require that a burdened religious practice be compelled by, or central to, an organization's system of religious belief to be protected.⁴⁹ Relatedly, RFRA does not permit the government to assess the reasonableness of a religious belief, including the adherent's assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents.⁵⁰

A law substantially burdens religious exercise under RFRA if it "bans an aspect of the adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice."⁵¹ However, where a law enforced by ED infringes on a religious practice that an organization itself regards as unimportant or inconsequential, no substantial burden has been imposed for purposes of RFRA.⁵² Regarding the strict scrutiny standard, "broadly formulated interests justifying the general applicability of government mandates" are insufficient to constitute compelling government interests under RFRA.⁵³

The Supreme Court recently reinforced the Federal government's obligation to accommodate religion under RFRA in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*.⁵⁴ There, the Court upheld as a permissible accommodation of religion certain Federal agency rules promulgating exemptions for religious entities, relieving them of requirements that would violate their sincerely held religious beliefs.⁵⁵ The Court

exists is for statutes that explicitly exclude the application of RFRA. *Id.* § 2000bb–3(b).

⁴⁵ The Supreme Court recognized in *Bostock v. Clayton County* that "[b]ecause RFRA operates as a kind of super statute displacing the normal operation of other federal laws, it might supersede [nondiscrimination statutes] in appropriate cases." No. 17–1618, slip op. at 32 (U.S. June 15, 2020).

⁴⁶ Title IX also includes an exemption for educational institutions that are controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization. 20 U.S.C. 1681(a)(3); 34 CFR 106.12.

⁴⁷ See 34 § 76.102 for a more comprehensive list of Department programs and their authorizing statutes.

⁴⁸ Attorney General Memorandum at 3 (citing *Sherbert v. Verner*, 374 U.S. 398, 405–06 (1963)).

⁴⁹ See 42 U.S.C. 2000bb–2(4).

⁵⁰ *Hobby Lobby*, 573 U.S. at 724.

⁵¹ Attorney General Memorandum at 5a.

⁵² Attorney General Memorandum at 5a.

⁵³ *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 431 (2006).

⁵⁴ No. 19–431 (U.S. July 8, 2020).

⁵⁵ *Little Sisters*, slip op. at 26.

³⁰ 34 CFR 75.52(a)(2); 34 CFR 76.52(a)(2); 2 CFR 3474.15(b)(2); 2 CFR 200.300.

³¹ 34 CFR 674.9(c); 34 CFR 675.9(c); 34 CFR 676.9(c); 34 CFR 682.301(a); 34 CFR 690.75; 34 CFR 685.200(a); 34 CFR 690.75. The Department notes that the unofficial version of this rule was released on July 1, 2020, but the final rule will not go into effect until July 1, 2021.

³² 34 CFR 674.35(c); 34 CFR 674.36(c); 34 CFR 682.210(m). The Department notes that the unofficial version of this rule was released on July 1, 2020, but the final rule will not go into effect until July 1, 2021.

³³ 34 CFR 685.219(b). The Department notes that the unofficial version of this rule was released on July 1, 2020, but the final rule will not go into effect until July 1, 2021.

³⁴ 2 CFR 3474.15(f); 34 CFR 75.52(e); 34 CFR 76.52(e).

³⁵ 2 CFR 3474.15(f).

³⁶ 34 CFR 75.52(f); 34 CFR 76.52(f).

³⁷ *Id.*

³⁸ *Little Sisters*, slip op. at 19 (quoting *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 693 (2014)).

³⁹ 494 U.S. 872 (1990).

⁴⁰ *Id.* at 878–79.

⁴¹ *Hobby Lobby*, 573 U.S. at 728.

⁴² 42 U.S.C. 2000bb–1(a).

⁴³ *Id.* § 2000bb–1(b).

⁴⁴ See *id.* § 2000bb–3(a) (RFRA applies "to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. 2000bb–3(a)(2000)). The only exception that

explained that when Supreme Court precedent, other lawsuits, and/or public comments under the Administrative Procedure Act's rulemaking process make it clear that RFRA is implicated, it is incumbent upon Federal agencies to "look to RFRA's requirements . . . when formulating their [regulations]" or else "they would certainly be susceptible to claims that the rules were arbitrary and capricious for failing to consider an important aspect of the problem."⁵⁶ The Department remains committed to following this mandate and has instituted the foregoing RFRA information process to further protect the religious liberties of institutions and individuals participating in ED programs.

b. Department RFRA Information Submission Process

RFRA protects the free exercise of religion by individuals and by organizations,⁵⁷ including institutions of higher education. Any person may have a private right of action under RFRA based on a burden to religious exercise, and may inform the Department of that fact.

Informing the Department of a burden imposed on a person's exercise of religion, or choosing not to do so, has no impact on the ability of that individual or organization to bring an independent lawsuit against the Department under RFRA. For example, electing *not* to inform the Department does not constitute a failure to exhaust administrative remedies nor does it bar a person from bringing a RFRA action.⁵⁸

Who may submit information about a RFRA burden?

You may inform the Department of a burden or potential burden under RFRA on behalf of yourself, another person, or an organization.

What information should I include in my submission?

Your submission should include the following information:

- Filer name
- Filer address
- Filer email address
- Filer phone number
- Burdened person name (if different from filer)
- Burdened person address (if complainant is an organization)
- The following statement, followed by the signature of the burdened person or the signature of the burdened person's parent or legal guardian in appropriate circumstances: "I give the Department of Education my consent to reveal my identity (and that of my minor child/ward on whose behalf the submission is filed) to others to further the Department's investigation and enforcement activities."⁵⁹

- Description of religious exercise at issue
- Explanation of whether religious exercise stems from sincerely held religious belief
- Description of Department program at issue
- Description of how the Department has substantially burdened or could substantially burden religious exercise (please be as specific as possible)
- Description of how any other entity or individual has substantially burdened or could substantially burden religious exercise in the use of Department funds
- The date(s) of any alleged violation, and whether it is ongoing
- Any additional information that might help the Department when reviewing the submission

How do I submit my information?

Submit your information by any of the following methods:

- Email your submission to RFRA@ed.gov. Please note that communication by unencrypted email presents a risk that personally identifiable information contained in such an email may be intercepted by unauthorized third parties.
- Mail or fax your submission to our office at the address below. Please note that it will take longer to process your submission if submitted by mail or fax.

U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Washington, DC 20202-1500, Fax: (202) 245-7047.

What happens next?

After you submit your information, it will be forwarded to the Department's Office of the General Counsel (OGC) and the Department's Center for Faith and Opportunity Initiatives. OGC, in consultation with other Department offices or Federal agencies when appropriate, will review your information and determine whether further investigation is warranted. Within 30 calendar days of the Department's receipt of your submission, the Department will apprise you in writing of any additional actions the Department will take with respect to your submission. Courses of action may include actions such as the following: following up for more information from you or from third parties, directing you to another organization for further help, or initiating existing remedies for noncompliance against a grant recipient including a State, as outlined in Title 34 of the Code of Federal Regulations, Subpart G of Part 75 and Subpart I of Part 76.

the burdened person is necessary in order to address the information submitted, OGC will require written consent before proceeding. A person submitting information on behalf of another burdened person is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18. Where the person is a minor (under the age of 18) or a legally incompetent adult, this statement must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for persons under the age of 18 if they are emancipated under State law and are therefore considered to have obtained majority. Proof of emancipation or incompetence must be provided under such circumstances.

IV. Grant Applicants and the Center for Faith and Opportunity Initiatives

On May 3, 2018, the President signed Executive Order 13831,⁶⁰ titled "Establishment of a White House Faith and Opportunity Initiative," creating an office in the White House to ensure that faith-based and community organizations are included in policymaking at the Federal level. The President recognized the essential contributions of faith-based and community organizations and encouraged them to be active partners in policy creation and implementation. The President also required any Federal agency that did not already have a Center for Faith and Opportunity Initiatives (CFOI) to designate a Liaison for Faith and Opportunity Initiatives.

The Department houses its own CFOI, which collaborates with faith and community leaders to maximize participation of religious organizations in Department programs while eliminating barriers in the grantmaking or regulatory process to safeguard religious liberty.

A significant component of CFOI's role is communication and outreach. Outreach to stakeholders and faith and community leaders at the Federal, State, and local level is designed to communicate Department actions in a timely manner. CFOI has also hosted webinars providing assistance to foster and homeless students with the Free Application for Federal Student Aid (FAFSA), resources for citizens re-entering society from the prison system as they navigate career, technical, and apprenticeship opportunities, and information for community- and faith-based organizations on applying for Department grants.

CFOI staff appreciate hearing from stakeholders and are honored to share their concerns and feedback with key leaders within the Department. CFOI also coordinates with its counterparts at the White House and across the Federal government as appropriate.

Additionally, CFOI provides recommendations to the Department on education programs and policies in which faith-based and community organizations may partner and/or deliver more effective solutions without discrimination or unduly burdensome involvement by the Federal government. CFOI is committed to ensuring that faith-based organizations in States with discriminatory Blaine Amendments remain eligible for ED grants, in light of the Supreme Court's ruling in *Espinosa*.

Finally, the Department emphasizes that CFOI does not make funding decisions; these decisions are made through procedures established by each Department grant program.

[FR Doc. 2020-21648 Filed 9-29-20; 8:45 am]

BILLING CODE 4000-01-P

⁶⁰ Exec. Order No. 13831, 83 FR 20715 (May 3, 2018).

⁵⁶ *Id.* at 22.

⁵⁷ Attorney General Memorandum at 4.

⁵⁸ 42 U.S.C. 2000bb, *et. seq.*

⁵⁹ Information submitted to the Department is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when, among other reasons, it is necessary for the investigation of possible discrimination. When disclosure of the identity of

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board Chairs**

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) Chairs. The Federal Advisory Committee Act requires that public notice of this conference call be announced in the **Federal Register**.

DATES: Monday, October 19, 2020, 12:00 p.m.–3:00 p.m. EDT, Tuesday, October 20, 2020, 12:00 p.m.–3:00 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 Monday, October 12, 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 Monday, October 12, 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 23, 2020. Please send comments to Alyssa Harris at Alyssa.Harris@em.doe.gov.

FOR FURTHER INFORMATION CONTACT: Alyssa Harris, EM SSAB 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 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 Topics

Monday, October 19, 2020

- EM Headquarters Update and Site Statuses
- EM SSAB Chairs' Round Robin
- Reading of Public Comment
- EM Budget Presentation

Tuesday, October 20, 2020

- Waste Management and Regulatory Framework Presentation
- Reading of Public Comment
- Discussion of New Charges and Path Forward for the EM SSAB

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://energy.gov/em/listings/chairs-meetings>.

Signed in Washington, DC on September 25, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020-21588 Filed 9-29-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**National Nuclear Security Administration****Amended Record of Decision for the Continued Operation of the Y-12 National Security Complex (Y-12)**

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The National Nuclear Security Administration (NNSA), a separately organized agency within the U.S. Department of Energy (DOE), is amending its October 2019 Amended Record of Decision (AROD) for the Continued Interim Operation of the Y-12 National Security Complex (2019 AROD) to continue to implement its approach for meeting enriched uranium (EU) requirements, by upgrading existing EU processing buildings and constructing a new Uranium Processing Facility (UPF). Since publication of the 2019 AROD, NNSA finalized a *Supplement Analysis for the Final Site-Wide Environmental Impact Statement for the Y-12 National Security Complex, Earthquake Accident Analysis* (DOE/EIS-0387-SA-04) (2020 SA), which presented an accident analysis of earthquake consequences at the Y-12 site using updated seismic hazard analyses. Based on the analysis in the 2020 SA, NNSA determined that no additional NEPA documentation is required. This new 2020 AROD combines elements of the two alternatives previously analyzed in the 2011 *Final Site-Wide Environmental*

Impact Statement for the Y-12 National Security Complex (DOE/EIS-0387) (Y-12 SWEIS), and separates the single-structure UPF design concept into a new design consisting of multiple buildings, with each constructed to safety and security requirements appropriate to the building's function. All other defense mission activities and non-defense mission activities conducted at Y-12 under the alternative selected for implementation in the 2011 ROD would continue to be implemented.

FOR FURTHER INFORMATION CONTACT: For further information on this 2020 AROD or on the 2020 SA, contact: Ms. Terri Slack, Field Counsel, U.S. Department of Energy, National Nuclear Security Administration, NNSA Production Office, P.O. Box 2050, Oak Ridge, TN 37831, (865) 576-1722. This 2020 AROD and related NEPA documents are available at <https://www.energy.gov/nnsa/nnsa-nepa-reading-room>.

SUPPLEMENTARY INFORMATION:**Background**

Y-12 is NNSA's primary site for uranium operations, including EU processing and storage, and is one of the primary manufacturing facilities for maintaining the U.S. nuclear weapons stockpile. Y-12 is unique in that it is the only source of secondaries, cases, and other nuclear weapons components for the NNSA nuclear security mission. In the Y-12 SWEIS, NNSA analyzed the potential environmental impacts of ongoing and future operations and activities at Y-12, including alternatives for changes to site infrastructure and levels of operation. Five alternatives were analyzed in the Y-12 SWEIS: (1) No Action Alternative (maintain the status quo), (2) UPF Alternative, (3) Upgrade in-Place Alternative, (4) Capability-sized UPF Alternative, and (5) No Net Production/Capability-sized UPF Alternative. In the 2011 ROD (July 20, 2011, 76 FR 43319), NNSA decided to implement the Capability-sized UPF Alternative, to continue operation of Y-12, and to construct and operate a single-structure Capability-sized UPF at Y-12 as a replacement for certain existing buildings. Subsequent to the publication of the 2011 ROD, concerns about UPF cost and schedule growth prompted NNSA to reevaluate its strategy for meeting EU requirements, including the UPF design approach.

Under the updated strategy, approved in a July 12, 2016, Amended Record of Decision (2016 AROD), NNSA would meet EU requirements using a revised approach of upgrading existing EU processing buildings and constructing a smaller-scale UPF facility,

implementing a new multiple building design approach. The updated strategy is consistent with recommendations from a project peer review of the UPF [“Final Report of the Committee to Recommend Alternatives to the Uranium Processing Facility Plan in Meeting the Nation’s Enriched Uranium Strategy”] conducted in 2014. As approved in the 2016 AROD, under the new multiple building design approach, the single-structure UPF concept would be separated into multiple buildings, each being constructed to safety and security requirements appropriate to the building’s function and NNSA would perform necessary maintenance and upgrades to some existing EU facilities.

As the result of a lawsuit filed against DOE and NNSA, the federal district court issued several rulings related to NNSA’s NEPA documents for Y–12. See the 2019 AROD ((October 4, 2019, 84 FR 53133)) for a detailed discussion of that lawsuit and the associated NEPA documents for Y–12. Based on its determination that additional NEPA analysis of new information pertaining to seismic risks at Y–12 was needed, the judge vacated several of the Y–12 NEPA documents that were prepared subsequent to the Y–12 SWEIS, including the 2016 AROD. However, the court held that NNSA’s revised strategy of upgrading existing EU buildings pursuant to the Extended Life Program and constructing UPF with multiple buildings was adequately considered as part of the Y–12 SWEIS. Consequently, the court did not vacate the 2011 ROD or Y–12 SWEIS or enjoin any activities at Y–12. The court further held that NNSA is not required to prepare a Supplemental Environmental Impact Statement for the UPF Project or the Extended Life Program. See Memorandum Opinion and Order in Case 3:18-cv-00150-PLR-DCP. Thus, consistent with 10 CFR 1021.315(e), NNSA determined that the existing 2011 ROD for the Y–12 SWEIS could be amended, and in October 2019, NNSA issued the 2019 AROD (84 FR 53133) that authorized continuing implementation of the improvements previously authorized in the vacated 2016 AROD on an interim basis, pending the completion of the additional seismic analysis ordered by the court. In accordance with the court’s determination that additional NEPA analysis of new information pertaining to seismic risks at Y–12 is needed, NNSA prepared the 2020 SA.

Summary of Impacts Associated With Continued Operation of Y–12

NNSA prepared the 2020 SA to present an unbounded accident analysis

of earthquake consequences at Y–12, using updated seismic hazard analyses. The 2020 SA presents the earthquake impacts for the UPF and Extended Life Program facilities based upon updated seismic hazard information and analyses, including analysis of the 2014 U.S. Geological Survey seismic hazard/ maps. The 2020 SA compares and contrasts those impacts with impacts from the Y–12 SWEIS accident analysis. Two types of impact comparisons are presented: (1) Facility-to-facility; and (2) alternative-to-alternative. These comparisons support conclusions/ determinations as to whether the earthquake consequences constitute a substantial change that is relevant to environmental concerns; or if the new seismic information constitutes significant new circumstances or information relevant to environmental concerns and bearing on continued operations at Y–12 compared to the analysis in the Y–12 SWEIS.

As discussed in the 2020 SA, the potential impacts to non-involved workers and the offsite population associated with an earthquake accident at Y–12 would be less than impacts presented in the Y–12 SWEIS, both in considering the potential consequences of such an accident as well as the risks that such an accident would occur. The 2020 SA shows that the UPF design-basis earthquake accident and a seismic-induced criticality event in either the 9215 Complex or 9204–2E Facility (the two existing EU buildings)—or both facilities combined—would have insignificant impacts to non-involved workers and the offsite population and would have a very low likelihood of occurring. Under the worst case scenario of a beyond design-basis earthquake at the UPF, consequences of less than one latent cancer fatality would likewise be expected to the offsite population and non-involved workers and would have an extremely low risk of occurring. The 2020 SA also confirms that potential impacts to involved workers would be similar to or less than impacts presented in the 2011 SWEIS. Based on the results of the 2020 SA, NNSA determined that: (1) The earthquake consequences and risks do not constitute a substantial change; (2) there are no significant new circumstances or information relevant to environmental concerns; and (3) no additional NEPA documentation is required at this time.

Amended Decision

Based on the Y–12 SWEIS and the analysis in the 2020 SA, NNSA has decided to continue to operate Y–12 to meet the stockpile stewardship mission

critical activities assigned to the site. NNSA will also meet EU requirements using a hybrid approach of upgrading existing EU buildings under its Extended Life Program and separating the single-structure UPF into multiple buildings, with each constructed to safety and security requirements appropriate to the building’s function. This amended decision will enable NNSA to maintain the required expertise and capabilities to deliver uranium products while modernizing production facilities. This amended decision to continue operations will avoid many of the safety risks of operating aged buildings and equipment by relocating processes that cannot be sustained in existing, enduring buildings or through process improvements. Through the Extended Life Program, mission-critical existing and enduring buildings and infrastructure will be maintained and/or upgraded, which will enhance safety and security at the Y–12 site.

Signing Authority

This document of the Department of Energy was signed on September 18, 2020, by Lisa E. Gordon-Hagerty, Under Secretary for Nuclear Security and Administrator, NNSA, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020-21622 Filed 9-29-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of Final Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site in South Carolina

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces the availability of the Final Environmental Impact Statement (EIS) for Plutonium Pit Production at the Savannah River Site (SRS) in South Carolina (SRS Pit Production EIS) (DOE/EIS-0541). NNSA prepared the Final EIS to evaluate the potential environmental impacts of producing a minimum of 50 war reserve pits per year at SRS and developing the ability to implement a short-term surge capacity to enable NNSA to meet the requirements of producing pits at a rate of no fewer than 80 war reserve pits per year beginning during 2030 for the nuclear weapons stockpile.

DATES: NNSA will not issue any Record of Decision (ROD) on the proposal for a minimum of 30 days after the date that the U.S. Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**.

ADDRESSES: Requests for additional information related to the EIS should be sent to Ms. Jennifer Nelson, NEPA Document Manager, National Nuclear Security Administration, Savannah River Field Office, P.O. Box A, Aiken, SC 29802; or sent by email to NEPA-SRS@srs.gov. The Final SRS Pit Production EIS is available on the internet at: <https://www.energy.gov/nnsa/nnsa-nepareading-room> and <https://www.energy.gov/nepa/listings/latestdocuments-and-notice>.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, contact: Ms. Jennifer Nelson, NEPA Document Manager, National Nuclear Security Administration Savannah River Field Office, P.O. Box A, Aiken, SC 29802; phone: (803) 557-6372 or (803) 557-NEPA; or email: NEPA-SRS@srs.gov.

SUPPLEMENTARY INFORMATION: National security policies require DOE, through NNSA, to maintain the United States' nuclear weapons stockpile, as well as the nation's core competencies in nuclear weapons. NNSA has the mission to maintain and enhance the safety, security, and effectiveness of the nuclear weapons stockpile. Plutonium pits are critical components of every nuclear weapon, with nearly all current stockpile pits having been produced from 1978-1989. Today, the United States' capability to produce plutonium pits is limited.

Since 2014, Federal law has required the Secretary of Energy to produce no

less than 30 war reserve plutonium pits during 2026 and now requires that the nuclear security enterprise produces not less than 80 pits per year during 2030 (50 U.S.C. 2538a). NNSA's pit production mission was emphasized as a national security imperative by the 2018 Nuclear Posture Review, issued in February 2018 by the Office of the Secretary of Defense and subsequent Congressional statements of the policy of the United States. The 2018 Nuclear Posture Review announced that the United States will pursue initiatives to ensure the necessary capability, capacity, and responsiveness of the nuclear weapons infrastructure and the needed skill of the workforce, including providing the enduring capability and capacity to produce no fewer than 80 pits per year beginning no later than during 2030. The 2018 Nuclear Posture Review concludes that the United States must have sufficient research, design, development, and production capacity to support the sustainment of its nuclear forces.

To that end, DoD Under Secretary of Defense for Acquisition and Sustainment and Under Secretary for Nuclear Security and Administrator of the NNSA issued a Joint Statement on May 10, 2018, describing NNSA's recommended alternative to meet the pit production requirement based on the completion of an Analysis of Alternatives, an Engineering Assessment and a Workforce Analysis. To achieve the nation's requirement of producing no fewer than 80 pits per year beginning no later than during 2030, NNSA has proposed to repurpose the Mixed-Oxide Fuel Fabrication Facility (MFFF) at SRS to produce plutonium pits while also maximizing pit production activities at the Los Alamos National Laboratory (LANL). This two-prong (two-site) approach—with a minimum of 50 pits per year produced at SRS and a minimum of 30 pits per year at LANL—is considered the best way to manage the cost, schedule, and risk of such a vital undertaking. This approach improves the resiliency, flexibility, and redundancy of our Nuclear Security Enterprise by reducing reliance on a single production site.

The SRS Pit Production EIS is an important element of the overall National Environmental Policy Act (NEPA) strategy related to fulfilling national requirements for pit production, which NNSA announced on June 10, 2019 (84 FR 26849). In that announcement, NNSA stated that it would prepare at least three documents, including this SRS Pit Production EIS.

On April 3, 2020, NNSA electronically published the Draft SRS Pit Production EIS and published an NOA in the **Federal Register** announcing a 45-day public comment period for the Draft EIS (85 FR 18947). EPA also published its NOA of the Draft SRS Pit Production EIS on April 3, 2020 (85 FR 18957). The comment period was scheduled to end on May 18, 2020. On April 23, 2020, NNSA notified the EPA that it was extending the comment period until June 2, 2020. On May 1, 2020, the EPA published a notice in the **Federal Register** that announced the extension to the public comment period (85 FR 25436).

In light of the Coronavirus Disease 2019 (COVID-19) national emergency and guidance from the Centers for Disease Control and Prevention on public gatherings, NNSA held an internet-based (with telephone access) virtual public hearing in place of an in-person hearing. The virtual public hearing was held on April 30, 2020. In addition to the public hearing, the public was encouraged to provide comments via U.S. postal mail or electronically via email. Approximately 400 comment documents were received from individuals, interested groups, and Federal, State, and local agencies during the public comment period on the Draft EIS.

In the Final SRS Pit Production EIS, NNSA evaluates the potential impacts to the environment and human health from the following alternatives: (1) Proposed action to repurpose MFFF to produce a minimum of 50 pits per year; and (2) No-Action Alternative. NNSA considered all comments received on the Draft EIS in preparing the Final EIS and revised the Draft EIS to incorporate changes as a result of public comments. In addition, NNSA updated the Final EIS to describe and analyze evolution of the details associated with the Proposed Action. The Final EIS also includes NNSA's responses to all comments received.

NNSA will consider the environmental impact analysis presented in the Final SRS Pit Production EIS, along with other information, in making decisions regarding plutonium pit production at SRS. NNSA will not issue any ROD on the proposal for a minimum of 30 days after the date that EPA publishes its NOA in the **Federal Register**. NNSA will publish any ROD in the **Federal Register**.

Signing Authority

This document of the Department of Energy was signed on September 18, 2020, by Lisa E. Gordon-Hagerty, Under

Secretary for Nuclear Security and Administrator, NNSA, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020-21606 Filed 9-29-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20-1204-000]

ANR Pipeline Company, Columbia Gas Transmission, LLC, Columbia Gulf Transmission, LLC; Notice of Petition for Declaratory Order

Take notice that on September 21, 2020, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2020), ANR Pipeline Company, Columbia Gas Transmission, LLC, and Columbia Gulf Transmission, LLC (collectively, TC Energy Pipelines or Petitioner) filed a petition for a declaratory order seeking a Commission order holding that if Gulfport Energy Corporation (Gulfport) files for bankruptcy, the Commission will have concurrent jurisdiction, under sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c and 717d (2018), with U.S. Bankruptcy Courts with respect to each of the TC Energy Pipelines' respective firm transportation service agreements with Gulfport (Gulfport TSAs). The petition also requests that the Commission exercise that jurisdiction to establish an adjudicative proceeding to affirm that continued performance under the Gulfport TSAs does not seriously harm the public interest and that any party wishing to abrogate the Gulfport TSAs carries the burden of establishing that the public interest

mandates such abrogation, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Comment Date: 5:00 p.m. Eastern time on September 29, 2020.

Dated: September 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-21600 Filed 9-29-20; 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 rate filings:

Docket Numbers: ER10-2566-010; ER19-1819-001; ER18-1343-005; ER19-1821-001; ER19-1820-001; ER13-2322-006; ER15-190-012.

Applicants: Duke Energy Carolinas, LLC, Broad River Solar, LLC, Carolina Solar Power, LLC, Speedway Solar, LLC, Stony Knoll Solar, LLC, Duke Energy Progress, LLC, Duke Energy Renewable Services, LLC.

Description: Amendment to January 27, 2020 Notice of Change in Status of the Duke MBR Sellers.

Filed Date: 5/21/20.

Accession Number: 20200521-5203.

Comments Due: 5 p.m. ET 10/5/20.

Docket Numbers: ER20-1668-003.

Applicants: Dominion Energy South Carolina, Inc.

Description: Tariff Amendment: LGIP Modifications Deficiency Filing to be effective 11/24/2020.

Filed Date: 9/24/20.

Accession Number: 20200924-5081.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20-1777-001.

Applicants: Jersey Central Power & Light Company.

Description: Compliance filing: Compliance Filing to 287 to be effective 9/8/2020.

Filed Date: 9/24/20.

Accession Number: 20200924-5083.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20-2125-000.

Applicants: WGP Redwood Holdings, LLC.

Description: Second Supplement to June 22, 2020 WGP Redwood Holdings, LLC tariff filing.

Filed Date: 9/17/20.

Accession Number: 20200917-5143.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20-2284-002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 2900R13 KMEA NITSA; Cancellations of 1884R9, 1888R9 and 1890R9 Westar NITSAs to be effective 6/1/2020.

Filed Date: 9/24/20.

Accession Number: 20200924-5055.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20-2503-001.

Applicants: Paulding Wind Farm IV LLC.

Description: Tariff Amendment: Deficiency Filing for Paulding Wind IV

Reactive Rate Schedule to be effective 9/21/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5112.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2965–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA, SA No. 2549; Queue Nos. AC1–114/AC2–116 to be effective 8/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5119.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2966–000.

Applicants: Bayshore Solar A, LLC.

Description: § 205(d) Rate Filing: Bayshore Solar A, LLC Amended SFA to be effective 9/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5126.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2967–000.

Applicants: Bayshore Solar B, LLC.

Description: § 205(d) Rate Filing: Bayshore Solar B, LLC Amended SFA to be effective 9/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5129.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2968–000.

Applicants: Bayshore Solar C, LLC.

Description: § 205(d) Rate Filing: Bayshore Solar C, LLC Amended SFA to be effective 9/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5130.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2969–000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: § 205(d) Rate Filing: TFO Tariff Rate Revision to Conform with PUCT-Approved Rate to be effective 9/17/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5134.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2970–000.

Applicants: Big Sky North, LLC.

Description: § 205(d) Rate Filing: Shared Facilities Agreement to be effective 9/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5142.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2971–000.

Applicants: Elevation Solar C LLC.

Description: § 205(d) Rate Filing: Elevation Solar C LLC Amended SFA to be effective 9/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5143.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2972–000.

Applicants: Solverde 1, LLC.

Description: § 205(d) Rate Filing: Solverde 1, LLC Amended SFA to be effective 9/24/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5148.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: ER20–2973–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: SGIA (SA 2554) among NYISO, National Grid and Hecate Energy Albany 1 to be effective 9/14/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5011.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2974–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: SGIA (SA 2555) among NYISO, National Grid and Hecate Energy Albany 2 to be effective 9/14/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5012.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2975–000.

Applicants: Western Antelope Blue Sky Ranch B LLC.

Description: § 205(d) Rate Filing: Western Antelope Blue Sky Ranch B LLC Amended SFA to be effective 9/25/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5075.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2976–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 4262; Queue No. X3–015 to be effective 10/10/2017.

Filed Date: 9/24/20.

Accession Number: 20200924–5082.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2977–000.

Applicants: ORNI 34 LLC.

Description: Baseline eTariff Filing: MBRA Tariff to be effective 9/24/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5103.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2978–000.

Applicants: Catalyst Power REPCo LLC.

Description: Baseline eTariff Filing: Catalyst Power REPCo Market-Based Rate Application to be effective 11/24/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5104.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2979–000.

Applicants: Catalyst Power & Gas LLC.

Description: Baseline eTariff Filing: Catalyst Power & Gas Market-Based Rate Application to be effective 9/24/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5106.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2980–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–09–24 SA 3528 Certificate of Concurrence Union Electric (Ameren)-Evergny IA to be effective 8/30/2020.

Filed Date: 9/24/20.

Accession Number: 20200924–5114.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2981–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ICSA, First Revised SA No. 3484; Queue No. W3–032A to be effective 11/30/2019.

Filed Date: 9/24/20.

Accession Number: 20200924–5122.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER20–2982–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ICSA, SA No. 2781; Queue No. NQ44 to be effective 6/7/2012.

Filed Date: 9/24/20.

Accession Number: 20200924–5142.

Comments Due: 5 p.m. ET 10/15/20.

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 24, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–21602 Filed 9–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP20–1206–000]

Rover Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on September 22, 2020, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2020), Rover Pipeline LLC (Rover or Petitioner) filed a petition for declaratory order seeking a Commission order holding that if Gulfport Energy Corporation (Gulfport) files for bankruptcy, the Commission will have concurrent jurisdiction, under sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c and 717d (2018), with U.S. Bankruptcy Courts with respect to a firm transportation agreement and interruptible transportation agreement between Rover and Gulfport. In addition, Rover requests that the Commission expeditiously initiate paper hearing procedures to assist the Commission in its public interest determination and remove any uncertainty in any potential bankruptcy proceeding, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 29, 2020.

Dated: September 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21601 Filed 9–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP19–351–004.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Compliance filing 2020 Settlement Rates to be effective 11/1/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5040.

Comments Due: 5 p.m. ET 10/5/20.

Docket Numbers: RP20–1200–001.

Applicants: Gulf South Pipeline Company, LLC.

Description: Compliance filing Correction to Compliance Filing to CP17–476–002 to be effective 9/18/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5120.

Comments Due: 5 p.m. ET 10/5/20.

Docket Numbers: RP20–1207–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing—Effective November 1 2020 to be effective 11/1/2020.

Filed Date: 9/23/20.

Accession Number: 20200923–5075.

Comments Due: 5 p.m. ET 10/5/20.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21596 Filed 9–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2114–303]

Public Utility District No. 2 of Grant County, Washington; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Public Utility District No. 2 of Grant County, Washington (licensee) to construct a separate embankment immediately downstream of the existing dam and structurally connected to the existing embankment to improve seismic stability. The project is located on the mid-Columbia River in Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington. The project occupies lands managed by Bureau of Reclamation (Reclamation), Bureau of Land Management, U.S. Department of Army (Army), U.S. Fish and Wildlife Service (FWS), and the U.S. Department of Energy (DOE).

A draft environmental assessment (DEA) has been prepared as part of

staff's review of the proposal.¹ Grant PUD proposes to construct a roller-compacted concrete dam approximately 2,200-foot-long and 25-foot-high; a secant pile cutoff wall; a new 150-foot-long and 25-foot-high embankment; and a realigned section of an existing private roadway. The existing embankment would remain in place.

The DEA contains Commission staff's analysis of the probable environmental effects of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA may also be viewed on the Commission's website at <http://www.ferc.gov> using the elibrary link. Enter the docket number (P-2114) in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3372, or for TTY, (202) 502-865.

You may register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the issuance date of this notice. All documents may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. Paper filings made using the U.S. Postal Service should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number(s) P-2114-303. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments.

¹ On July 16, 2020, the Council on Environmental Quality (CEQ) issued a final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (Final Rule, 85 FR 43,304), which was effective as of September 14, 2020; however, the NEPA review of this project was in process at that time and was prepared pursuant to CEQ's 1978 NEPA regulations.

Dated: September 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-21599 Filed 9-29-20; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2015-0435; FRL-10011-99-OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Notification of Chemical Exports—TSCA Section 12(b) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Notification of Chemical Exports—TSCA Section 12(b) (EPA ICR Number 0795.16 and OMB Control Number 2070-0030) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2020. Public comments were previously requested via the **Federal Register** on March 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 30, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA-HQ-OPPT-2015-0435, online using www.regulations.gov (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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:

Harlan Weir, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-9885; email address: weir.harlan@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: This ICR addresses the information collection activities associated with the export notification requirements under section 12(b) of the Toxic Substances Control Act (TSCA), which requires any person who exports or intends to export a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6 and/or 7 to notify EPA of such export or intent to export. This requirement is described in more detail in 40 CFR part 707, subpart D. Upon receipt of notification, EPA advises the government of the importing country of the U.S. regulatory action that required the notification with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country. This information collection addresses the burden associated with industry reporting of export notifications. Respondents may claim all or part of a notice confidential, and EPA will disclose that information only to the extent permitted by, and in accordance with, the procedures in TSCA and 40 CFR part 2. As discussed in more detail in this ICR's supporting statement, this ICR renewal also incorporates burden estimates associated with an electronic reporting option for the information collection under TSCA section 12(b), for which EPA is requesting approval from OMB in this ICR renewal request.

Form Numbers: None.

Respondents/affected entities:

Exporters of chemical substances or mixtures from the United States to foreign countries.

Respondent's obligation to respond: mandatory (TSCA section 12(b) and 40 CFR part 707, subpart D.)

Estimated number of respondents: 198 (total).

Frequency of response: On occasion.

Total estimated burden: 2,934 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated costs: \$230,198 (per year), which includes \$13,793,30 in annualized capital or operation & maintenance costs.

Changes in the estimates: There is an overall decrease of 1,098 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease reflects a net change with a large decrease in burden due to the anticipated use of e-reporting and a small increase in burden due to other minor changes in the assumptions and related estimates. This change is an adjustment to the estimates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020-21615 Filed 9-29-20; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The 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 the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than October 30, 2020.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001. Comments can also be sent electronically to

Comments.applications@ny.frb.org:

1. *The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York;* to acquire 50 additional shares of 473 Broadway Holding Corporation and 2,000 additional shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

Board of Governors of the Federal Reserve System, September 25, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020-21647 Filed 9-29-20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket No. OP-1692]

Modifications to the Federal Reserve Banks' National Settlement Service and Fedwire® Funds Service To Support Enhancements to the Same-Day ACH Service and Corresponding Changes to the Federal Reserve Policy on Payment System Risk; Announcement of New Implementation Date

On December 30, 2019, the Board of Governors of the Federal Reserve System (Board) announced that it had approved (i) modifications to the Federal Reserve Banks' (Reserve Banks) payment services to facilitate adoption of a later same-day ACH processing and settlement window and (ii) corresponding changes to the Federal Reserve Policy on Payment System Risk (PSR policy).¹ The Board approved these modifications and changes with an implementation date of March 19, 2021.

The Board is amending the implementation date for these modifications and changes from March 19, 2021 to March 8, 2021, with the exception of two changes to the PSR

policy that will still be implemented on March 19, 2021.² This earlier implementation date will permit the Reserve Banks to test and implement modifications to the Fedwire® Funds Service and the National Settlement Service before March 19, 2021, which is Nacha's current effective date for implementing the later same-day ACH window.

Questions regarding this notice may be directed to Michael Ballard, Senior Financial Institution and Policy Analyst (202-452-2384); Ann Sun, Lead Financial Institution and Policy Analyst (202-912-7938), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202-263-4869).

Board of Governors of the Federal Reserve System, September 24, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020-21532 Filed 9-29-20; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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.

² Specifically, on March 19, 2021, the Board will (i) add a 6:00 p.m. ET posting time for settlement of commercial and government same-day ACH transactions, including return items, and (ii) remove the current 5:30 p.m. ET posting time for commercial and government same-day ACH return items, because these return items will post at the new 6:00 p.m. ET posting time. The Board is amending the implementation date for a third change to the PSR policy—an adjustment to the formula for calculating daylight overdraft fees—from March 19, 2021 to March 8, 2021.

¹ 84 FR 71940 (December 30, 2019).

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 15, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *North Star Holding Company, Inc., Jamestown, North Dakota*; through its subsidiary bank, Unison Bank, also of Jamestown, North Dakota, to retain voting shares of AccuData Services, Inc., Park River, North Dakota, and thereby engage in data processing activities pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, September 25, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020-21646 Filed 9-29-20; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Board for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Board is to make written recommendations on each executive's annual summary ratings, performance-based pay adjustment, and performance awards to the appointing authority.

DATES: This notice is applicable on September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202-942-1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Board which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Jim Courtney, Renee Wilder Guerin, Tee Ramos, and Kim Weaver.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020-21590 Filed 9-29-20; 8:45 am]

BILLING CODE 6760-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0322; Docket No. 2020-0001; Sequence No. 5]

Information Collection; Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment under Lease Acquisitions

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, GSA invites the public to comment on an extension concerning prohibition on contracting for certain telecommunications and video surveillance services or equipment under lease acquisitions. OMB has approved this information collection for use through February 28, 2021. GSA proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: GSA will consider all comments received by November 30, 2020.

ADDRESSES: Submit comments on this information collection to <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090-0322". Select the link "Comment Now" that corresponds with Information Collection 3090-0322.

Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "Information Collection 3090-0322" on your attached document.

Instructions: Please submit comments only and cite "Information Collection 3090-0322" in all correspondence related to this collection. Comments received generally will be posted without change to [regulations.gov](https://www.regulations.gov), including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [regulations.gov](https://www.regulations.gov) approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Procurement Analyst, General Services Acquisition Policy Division, 202-208-1568 or via email at gsarpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to, nor be subject to, a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

GSA requested and OMB authorized emergency processing of an information collection, as OMB Control Number 3090-0322, for the provision at FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services and the clause at FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, as used under lease acquisitions. GSA has determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act, because the prohibitions in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) went into effect on August 13, 2020.

b. The collection of information is essential to GSA's mission to ensure GSA complies with Section 889 in order to protect the Government supply chain from risks posed by covered telecommunications equipment or services.

c. GSA cannot comply with the normal clearance procedures because

public harm is reasonably likely to result if current clearance procedures are followed.

This requirement supports implementation of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) under lease acquisitions. This section prohibits agencies from procuring, obtaining, extending or renewing a contract with contractors that will provide or use covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2020 unless an exception applies.

This requirement is implemented in the Federal Acquisition Regulation (FAR) through the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. GSA's Class Deviation CD–2020–15 extends these requirements to lease acquisitions.

This clearance covers the following requirements:

- FAR 52.204–24 requires an offer or to represent whether they will provide or whether they will use any covered telecommunications equipment or services and if so, describe in more detail the use of the covered telecommunications equipment or services; and
- FAR 52.204–25 requires contractors to report covered telecommunications equipment, systems and services identified during performance of a contract.

GSA requested approval of this information collection in order to implement the law. The information will be used by agency personnel to identify and remove prohibited equipment, systems, or services from Government use. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

B. Annual Reporting Burden

1. FAR 52.204–24 for GSA Lease Acquisitions

Respondents: 3,128.
Responses per Respondent: 1.
Total Responses: 3,128.
Hours per Response: 3.
Total Burden Hours: 9,384.

2. FAR 52.204–25 for GSA Lease Acquisitions

Respondents: 313.
Responses per Respondent: 5.
Total Responses: 1,565.
Hours per Response: 3.
Total Burden Hours: 4,695.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division, 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite “Information Collection 3090–0322”, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–21597 Filed 9–29–20; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2016–0004]

Availability of Draft Toxicological Profile for Ethylene Oxide

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comments on the Draft Toxicological Profile for Ethylene Oxide.

DATES: Written comments must be received on or before December 29, 2020.

ADDRESSES: You may submit comments, identified by docket number ATSDR–2016–0004, by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Office of Innovation and Analytics, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd. NE, Mail Stop S102–1, Atlanta, GA, 30329–4027.

Attn: Docket No. ATSDR–2016–0004.

Instructions: All submissions must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Henry Abadin, Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 1600 Clifton Rd. NE, Mail Stop S102–1, Atlanta, GA, 30329–4027, Email: ATSDRToxProfileFRNs@cdc.gov; Phone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: ATSDR has updated the draft profile based on availability of new health effects information since its initial release. On March 21, 2016 ATSDR announced that it was preparing to develop Draft Toxicological Profiles for public comment release (81 FR 15110), which include Ethylene Oxide. All toxicological profiles issued as “Drafts for Public Comment” represent the result of ATSDR’s evidence-based evaluations to provide important toxicological information on priority hazardous substances. ATSDR is seeking public comments and additional information or reports on studies about the health effects of ethylene oxide for review and potential inclusion in the profile. ATSDR considers key studies for these substances during the profile development process. This document solicits any relevant, additional studies. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion in the profile.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, information, and data.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public

disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. ATSDR will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. ATSDR will carefully consider all comments submitted in preparation of the final Toxicological Profile and may revise the profile as appropriate.

Legislative Background

The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding the hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant potential threat to human health. The SPL is available online at www.atsdr.cdc.gov/spl.

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances (CERCLA Section 104(i)(1)(B); 42 U.S.C. 9604(i)(1)(B)); to respond to requests for health consultations (CERCLA Section 104(i)(4); 42 U.S.C. 9604(i)(4)); and to support the site-specific response actions conducted by the agency.

Availability

The Draft Toxicological Profile for Ethylene Oxide will be available online at <http://www.atsdr.cdc.gov/ToxProfiles>

and at www.regulations.gov, Docket No. ATSDR-2016-0004.

Donata Green,

Acting Director, Office of Policy, Planning, and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2020-21619 Filed 9-29-20; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20-1242; Docket No. CDC-2020-0099]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Strengthening U.S. Response to Resistant Gonorrhea, which is to intended to enhance U.S. state and local public health surveillance and program infrastructure, build capacity to support rapid detection and public health response to antibiotic-resistant gonorrhea (an urgent public health threat), and advance the understanding of epidemiological factors contributing to antibiotic-resistant gonorrhea. CDC is requesting a three-year approval.

DATES: CDC must receive written comments on or before November 30, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2020-0099 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without

change, all relevant comments to [Regulations.gov](http://www.regulations.gov).

Please note: Submit all comments through the Federal eRulemaking portal ([regulations.gov](http://www.regulations.gov)) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Strengthening U.S. Response to Resistant Gonorrhea (SURRG) (OMB Control No. 0920-1242, Exp. 9/30/

2021)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purposes of this Revision request for Strengthening U.S. Response to Resistant Gonorrhea (SURRG) are to: (1) Improve national, state, and local capacity to rapidly detect, monitor, and respond to emerging antibiotic-resistant gonorrhea (and get actionable information to local health departments), (2) understand trends in and factors contributing to antibiotic-resistant gonorrhea, and (3) build a robust evidence base for public health action. This information collection is important because: (1) Effective treatment of gonorrhea is critical to gonorrhea control and prevention, (2) untreated or inadequately treated gonorrhea can cause serious reproductive health complications, such as infertility, (3) *Neisseria gonorrhoeae* (the bacterium that causes gonorrhea) has consistently demonstrated the ability to develop antibiotic resistance and may be developing resistance to the last remaining treatment option recommended by the Centers for Disease Control and Prevention (CDC), and (4) antibiotic-resistant gonorrhea is extremely difficult to detect without enhanced surveillance and public health activities, such as SURRG, because healthcare providers rarely perform or have access to culture and resistance testing for individual patients.

Jurisdictions participating in SURRG applied as part of a competitive process and will participate voluntarily. As an overview of SURRG, healthcare providers at participating clinics collect specimens for *N. gonorrhoeae* culture

testing. Specimens that demonstrate *N. gonorrhoeae* (called “isolates”) rapidly undergo antibiotic resistance testing at the local public health laboratory. Detection of resistance is rapidly communicated by laboratory staff to the healthcare provider and health department. The patient (from whom the resistant specimen was collected) is interviewed by local health department staff about risk factors and recent contacts, and will be re-tested to ensure that they were cured. Recent contacts are interviewed by the health department (contact tracing) and tested for gonorrhea. The participating health departments collect and transmit to CDC demographic and clinical data about persons tested for and diagnosed with gonorrhea in the participating clinics, results of local antibiotic resistance testing, and information about field investigations. None of the data transmitted to CDC contains any personally identifiable information. These data are used by CDC to monitor and better understand resistance and identify effective approaches to prevent resistance spread. Data are transmitted to CDC through a secure encrypted file transfer application and stored in a secure CDC server with strictly controlled and restricted access rights.

In processes that take approximately 16 hours every two months (plus an annual cumulative datafile), local SURRG data managers abstract STD clinic data for patients tested for gonorrhea and field investigation data, receive gonorrhea data from non-STD clinic healthcare sites and resistance testing results from local public health laboratories, and clean and transmit data to CDC.

Other data managers at each participating non-STD clinic health center abstract, clean, and transmit data

(approximately three hours every two months). Microbiologists at public health laboratories from each funded jurisdiction conduct resistance testing on ~700 *N. gonorrhoeae* isolates each year (600 clinical isolates and 100 control strains; each test ~10 minutes). Laboratory data managers take about one hour every two months to abstract, clean, and transmit data.

Health department staff will interview: Any person diagnosed with antibiotic-resistant gonorrhea or have a case of gonorrhea of public health significance index case, and their sexual contacts. On average, each jurisdiction will identify four drug-resistant isolates each month; these isolates will spur field investigations and six additional interviews monthly. We estimate a total of 120 interviews annually at each site, for a total across the eight sites of 960 interviews each year. Each interview will take ~20 minutes.

The total estimated annual burden hours are 2,665. This burden represents a decrease from the burden of the initial submission. The number of jurisdictions decreased from nine to eight. So the number of local data managers decreased from nine to eight (and the burden hours decreased from 1008 to 896), the number of public health microbiologists decreased from nine to eight (burden hours decreased from 1050 to 933), the number of lab data managers decreased from nine to eight (burden hours decreased from 54 to 48), and the number of gonorrhea and contacts decreased from 1080 to 960 (burden hours decreased from 540 to 480). The number of clinic sites will increase from 18 to 26. Respondents receive federal funds to participate in this project. There are no additional costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Local SURRG data manager	STD Clinic Facility Data Elements ...	8	7	16	896
Data manager at non-STD clinic health centers.	Non-STD Clinic Facility Data Elements.	26	6	3	468
Public Health Laboratory Microbiologist.	Laboratory Data Elements	8	700	10/60	933
Public Health Laboratory Data Manager.	Laboratory Testing Data Elements ..	8	6	1	48
Gonorrhea Patients, Social and Sexual Contacts.	Investigation Data Elements	960	1	0.33	320
Total .....	.....	.....	.....	.....	2,665

Jeffery M. Zirger,
*Lead, Information Collection Review Office,
 Office of Scientific Integrity, Office of Science,
 Centers for Disease Control and Prevention.*
 [FR Doc. 2020-21621 Filed 9-29-20; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DD21-001, Study to Explore Early Development (SEED) Follow up Studies.

Date: January 12-13, 2021.

Time: 10:00 a.m.–6:00 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop S107-8, Atlanta, Georgia 30341,

Telephone: (770) 488-6511, *JRaman@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

*Director, Strategic Business Initiatives Unit,
 Office of the Chief Operating Officer, Centers
 for Disease Control and Prevention.*

[FR Doc. 2020-21604 Filed 9-29-20; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC) Recommendations and State Self-Assessment Survey (NEW)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office on Trafficking in Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new survey, the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC) Recommendations and State Self-Assessment Survey.

DATES: *Comments due within 30 days of publication.* OMB is required to make a

decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The Preventing Sex Trafficking and Strengthening Families Act of 2014 mandated the NAC to develop a report describing how each state and territory has implemented its recommendations to address sex trafficking in children and youth. The NAC proposes to administer a survey allowing states to assess their progress in implementing NAC recommendations. Submissions will allow states to document their efforts in the following sections: Multidisciplinary Response, Screening and Identification, Child Welfare, Service Provision, Housing, Law Enforcement and Prosecution, Judiciary, Demand Reduction, Prevention, Legislation and Regulation, Research and Data, and Funding. Each state will have the opportunity to provide a self-assessed tier ranking for each recommendation, a justification of their assessment, sources for their assessment, and the public or private nature of those sources.

Respondents: State Governors, Child Welfare Agencies, Local Law Enforcement, and Other Local Agencies.

Annual Burden Estimates:

ESTIMATED OPPORTUNITY COSTS FOR RESPONDENTS

Instrument	Total number of respondents contributing for 50 states	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
NAC Recommendations and State Self-Assessment Survey	250	1	6.85	1,713

Estimated Total Annual Burden Hours: 1,713.

ESTIMATED RECORDKEEPING COSTS

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
NAC Recommendations and State Self-Assessment Survey	50	1	40	2,000.

Estimated Total Annual Burden Hours: 2,000

(Authority: 42 U.S.C. 1314b)

John M. Sweet Jr.,
ACF/OPRE Certifying Officer.

[FR Doc. 2020-21617 Filed 9-29-20; 8:45 am]

BILLING CODE 4184-47-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-D-1791]

E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers.” The draft guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH), formerly the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use. The draft guidance contains revised questions and answers (Q&As) for the ICH guidance for industry “E14 Clinical Evaluation of the QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs” and new Q&As for the ICH guidance for industry “S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals” that provide recommendations on considerations for an integrated risk assessment combining nonclinical and clinical data—in particular, at later stages of drug

development when clinical data are available. The draft guidance is intended to provide a harmonized approach to integrate nonclinical and clinical information for proarrhythmia risk assessment to streamline drug development and provide clarity on regulatory decision making.

DATES: Submit either electronic or written comments on the draft guidance by November 30, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2020-D-1791 for “E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the

heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: David Strauss, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 64, Rm. 2072, Silver Spring, MD 20993-0002, 301-796-6323; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993-0002, 301-796-5259.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers.” The draft guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines have

substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (<https://www.ich.org/>).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA’s guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency’s current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In July 2020, the ICH Assembly endorsed the draft guideline entitled “E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers” and agreed that the guideline should be made available for public comment. The draft guideline is the product of the E14 and S7B Implementation Working Group of the ICH. Comments about this draft will be considered by FDA and the ICH E14 and S7B Implementation Working Group.

The draft guidance contains revised Q&As about the ICH guidance for industry “E14 Clinical Evaluation of the QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-

Antiarrhythmic Drugs” and new Q&As about the ICH guidance for industry “S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals” that provide recommendations on considerations for an integrated risk assessment combining nonclinical and clinical data—in particular, at later stages of drug development when clinical data are available. For ICH E14, revised Q&As provide recommendations for how an integrated nonclinical and clinical risk assessment can be particularly valuable under scenarios when a sufficiently high multiple of maximum therapeutic exposure cannot be achieved (ICH E14 Q&A 5.1); and under scenarios where a placebo-controlled comparison is not possible, safety considerations preclude administering suprathreshold doses to obtain high clinical exposures and/or safety or tolerability prohibit the use of the product in healthy participants (ICH E14 Q&A 6.1). For ICH S7B, new Q&As provide recommendations on an integrated risk assessment and how it can inform the design of clinical investigations and the interpretation of their results (ICH S7B Q&As 1.1 and 1.2); best-practice considerations for in vitro (ICH S7B Q&As 2.1 to 2.5) and in vivo (ICH S7B Q&As 3.1 to 3.5) studies; and principles for proarrhythmia models, including in silico (ICH S7B Q&As 4.1 to 4.3). The draft guidance is intended to provide a harmonized approach to integrate nonclinical and clinical information for proarrhythmia risk assessment to streamline drug development and provide clarity on regulatory decision making. FDA seeks public comment on all aspects of these draft Q&As; of note, ICH E14 Q&A 6.1 encourages public comment on how to define the lack of clinically relevant QT prolongation in the context of this Q&A.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA’s good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on “E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.regulations.gov>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, or <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>.

Dated: September 25, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020-21624 Filed 9-29-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-1898]

Vaccines and Related Biological Products Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). This meeting was announced in the **Federal Register** of August 28, 2020. The amendment is being made to reflect changes in the **ADDRESSES** portion of the document.

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya or Monique Hill, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993-0002, 240-506-4946, Prabhakara.Atreya@fda.hhs.gov, or 301-796-4620, monique.hill@fda.hhs.gov, respectively, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 2020, (85 FR 18985), FDA announced that a

meeting of the Vaccines and Related Biological Products Advisory Committee would be held on October 22, 2020. On page 53385, in the first column, the **ADDRESSES** portion of the document is changed to read as follows:

The online web conference meeting will be available at the following link: <https://fda.yorkcast.com/webcast/Play/c26e83a0f77a412296949f4f43af4c981d>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2020-N-1898. The docket will close on October 15, 2020. Submit either electronic or written comments on this public meeting by October 15, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 15, 2020. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 15, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before October 15, 2020, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2020-N-1898 for Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see the **ADDRESSES** section), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: September 24, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020-21630 Filed 9-29-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-0259]

Patient-Focused Drug Development for Stimulant Use Disorder; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: In the **Federal Register** notice published on March 19, 2020, the Food and Drug Administration (FDA, the Agency, or we) announced the cancellation of the meeting entitled "Patient-Focused Drug Development for Stimulant Use Disorder" originally scheduled to occur on March 10, 2020, as announced in the **Federal Register** on February 18, 2020. FDA is announcing a new date for the meeting, to occur in a virtual format. The purpose of the public meeting is to allow FDA to obtain stakeholder perspectives on the impact of stimulant use disorder and views on treatment approaches for stimulant use disorder.

DATES: The public meeting will be held on October 6, 2020, from 12:30 p.m. Eastern Time to 5 p.m. Eastern Time. Submit either electronic or written comments on this public meeting by December 7, 2020. See the

SUPPLEMENTARY INFORMATION section for registration date and information.

ADDRESSES: Please note that due to the impact of the COVID-19 pandemic, all meeting participants will be joining this public meeting via an online conferencing platform.

The docket number to accept comments is FDA-2020-N-0259. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 7, 2020. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 7, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2020-N-0259 for "Patient-Focused Drug Development for Stimulant Use Disorder; Public Meeting; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Lyna Merzoug, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6308, Silver Spring, MD 20993-0002, 301-796-6001, PatientFocused@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On March 19, 2020, FDA announced in the **Federal Register** (85 FR 15789) the cancellation of the meeting entitled “Patient-Focused Drug Development for Stimulant Use Disorder” originally scheduled to occur on March 10, 2020, as announced in the **Federal Register** on February 18, 2020 (85 FR 8877). The meeting has been rescheduled in a virtual format.

This meeting will provide FDA the opportunity to obtain input from individuals with stimulant use disorder and other related stakeholders on the impact of stimulant use disorder and views on treatment goals and approaches. FDA is interested in stakeholders’ perspectives on: (1) The health effects and daily impacts of their condition; (2) the impact (if any) of opioid and polysubstance use on their condition; (3) treatment goals; and (4) decision factors considered when seeking out or selecting a treatment.

Stimulant use disorder describes a range of problems associated with the use of illicit stimulant drugs, including methamphetamine and cocaine, and prescription stimulants (*e.g.*, ADDERALL, RITALIN), but not including caffeine or nicotine. A diagnosis of stimulant use disorder is made when a clinician identifies a pattern of use of amphetamine-type substance, cocaine, or other stimulant that leads to clinically significant impairment or distress, including an inability to reduce or control consumption, cravings to use a stimulant, continued use of a stimulant despite it causing negative consequences, and the need to use increased amounts of a stimulant to achieve the desired effect. There are no FDA-approved medications for stimulant use disorder.

The questions that will be asked of individuals with stimulant use disorder and other stakeholders at the meeting are listed in the following section and organized by topic. For each topic, a brief initial panel discussion will begin the dialogue. This will be followed by a facilitated discussion inviting comments from other audience participants. In addition to input generated through this public meeting, FDA is interested in receiving stakeholder input addressing these questions through written comments, which can be submitted to the public docket (see **ADDRESSES**). As noted above, when submitting comments, if you do not wish your name and contact information to be made publicly available, you can provide this

information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” When submitting comments, if you are commenting on behalf of a stimulant user, please indicate that you are doing so and answer the following questions as much as possible from the stimulant user’s perspective, but please refrain from providing information that would identify third parties, including minor children.

FDA will post the agenda and other meeting materials approximately 5 days before the meeting at <https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-patient-focused-drug-development-stimulant-use-disorder-03102020-03102020>.

II. Discussion Questions at the Public Meeting**A. Topic 1: Health Effects and Daily Impacts**

1. How would you describe your experience with stimulant use disorder?

a. Which stimulant(s) did you start using first?

b. What stimulant(s) are you using now?

c. Did you use any other illicit or prescription drugs before you started using the stimulant that you are currently using?

d. How are you using stimulants? How has your stimulant(s) use changed over time? Are you using more frequently or at higher doses?

e. Do you use stimulants in combination with other drug(s)? If so, what other drugs do you use and why?

f. Have you used a stimulant(s) as treatment for opioid withdrawal and/or overdose?

2. Of all the ways that stimulant use disorder impacts your health and well-being, which effects have the most significant impact on your daily life and the daily life of your family and/or friends? Examples may include physical and mental effects of using stimulants (effects on your body and thinking), effects of stimulant withdrawal, effects of cravings, impacts on your ability to function in personal or professional life, or emotional or social effects.

a. What drives your use of stimulants?

b. Are there certain activities that you can only do if you take a stimulant? If so, what are those activities?

c. Are there specific activities that are important to you but that you cannot do at all or as fully as you would like because of your stimulant use? Examples of activities may include daily hygiene; meeting school, work, or

family responsibilities; participation in social activities.

d. How does your stimulant use affect daily life on your best days? On your worst days?

3. What worries you most about your condition?

B. Topic 2: Current Approaches to Management

1. Have you considered seeking treatment? Why or why not?

2. If you are using more than one substance, would stimulant use be the primary or secondary reason to consider treatment?

a. If not stimulants, what substance would be the primary reason you would seek treatment?

3. What are you currently doing to help manage your stimulant use?

a. How well have these management approaches worked for you?

b. How well have they helped address the effects of stimulant use that are most troubling to you?

c. What are the biggest problems you have faced in using these approaches? Examples may include bothersome side effects, challenges or barriers to access, concern about stigma.

4. What are the biggest factors that you consider when making decisions about seeking out or engaging in treatment for stimulant use disorder?

5. What specific things would you look for in an ideal treatment for stimulant use disorder?

6. If you had the opportunity to participate in a clinical study to test an experimental treatment for stimulant use disorder, what factors would you consider when deciding whether you would participate?

C. Topic 3: Impact of COVID-19

1. Has the COVID-19 pandemic impacted your substance use or your desire to seek treatment? If yes, please describe how.

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting via webcast must register online at <https://pfdd-stimulantusedisorder.eventbrite.com>.

Contact information provided during registration will remain confidential and will only be used to send meeting updates to participants.

Registration for this virtual event is free, although there may be limited space for attendance based on bandwidth availability. Webcast information will be provided upon completion of registration. Closed

captioning will be provided. Please check the meeting website for the latest information: <https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-patient-focused-drug-development-stimulant-use-disorder-03102020-03102020>.

Streaming Webcast of the Public Meeting: This public meeting will be streamed via webcast only. The recording and presentation slides, along with a meeting transcript and summary report, will also be made publicly available after the meeting. To register for the webcast, please visit <https://pfdd-stimulantuse-disorder.eventbrite.com>. The webcast can be accessed via <http://fda.yorkcast.com/webcast/Play/89f7acb8d56e4de8827d1ade8efa42661d>. Simply click on the link and hit the "play" button and it will start. The webcast link will be activated 30 minutes prior to the start of the meeting.

FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at <https://www.regulations.gov>. It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the meeting website at <https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-patient-focused-drug-development-stimulant-use-disorder-03102020-03102020>.

Dated: September 24, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020-21623 Filed 9-29-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice To Announce Supplemental Awards To Support Training and Technical Assistance To Address Intimate Partner Violence

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of Supplemental Awards.

SUMMARY: HRSA provided supplemental funding to two current National Training and Technical Assistance Partners award recipients to advance

HRSA's Strategy to Address Intimate Partner Violence by expanding critical training and technical assistance (T/TA) to health centers.

FOR FURTHER INFORMATION CONTACT: Tracey Orloff, Director, HRSA, Strategic Partnerships Division, Office of Quality Improvement, at TOrloff@hrsa.gov or (301) 443-3197.

SUPPLEMENTARY INFORMATION:

Recipients of the Award: School-Based Health Alliance (SBHA) and Futures without Violence (Futures).

Amount of Non-Competitive Award: \$75,000 for SBHA and \$100,000 for Futures.

Period of Supplemental Funding: Fiscal year 2020 and ongoing annually to the end of the project period, contingent upon availability of funds and recipient performance.

CFDA Number: 93.129.

Authority: Section 330(l) of the Public Health Service Act, 42 U.S.C. 254b(l).

Justification: Supplemental funding to SBHA and Futures is necessary to ensure timely implementation of expanded T/TA that builds upon current T/TA activities to strengthen health center capacity to identify, prevent, and address intimate partner violence (IPV) and its effects. SBHA's expanded T/TA will result in new and strengthened health center partnerships to protect and support children, increased health center capacity to address social determinants of health, and expanded health center strategies to prevent violence. Futures' expanded T/TA will expand health center use of electronic health records to support IPV and human trafficking interventions, increase collection of health center IPV and human trafficking data, and strengthen the use of health information technology to connect health center patients to referral services and support. The award recipients have the demonstrated subject matter expertise and experience required to swiftly address these time-sensitive needs.

Thomas J. Engels,

Administrator.

[FR Doc. 2020-21573 Filed 9-29-20; 8:45 am]

BILLING CODE 4165-16-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 28-30, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443-7193, hargravesl@mail.nih.gov.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: October 29-30, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301-435-3009, elliottro@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: October 29-30, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205, MSC7846, Bethesda, MD 20892, (301) 435-1021, rovescaa@mail.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: October 29-30, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301-760-8207, schauweckerpe@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: October 29, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301-435-1149, marci.scidmore@nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology A Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437-3478, wieschd@csr.nih.gov.

Name of Committee: Immunology Integrated Review Group; Immunity and Host Defense Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301-435-1506, jakesse@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tina Tze-Tsang Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Suite 3030,

Bethesda, MD 20817, (301) 435-4436, tangt@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urology and Urogynecology.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 827-5467, ganesan.ramesh@nih.gov.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301-594-7945, smileyja@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Technology Development Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20852, 301-402-9791, joonil.seog@nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Y. Ng, Ph.D., MBA Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301-435-1715, ngan@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Interdisciplinary Molecular Sciences and Technologies (S10).

Date: October 29, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301-408-9655, gubina@csr.nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Leslie S. Itsara, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402-5174, leslie.itsara@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Allergies and Mucosal Immunology.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, MSC 7814, Bethesda, MD 20892, (301) 435-3566, alok.mulky@nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301-435-1781, liuyh@csr.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175,

MSC 7892, Bethesda, MD 20892, 301-435-1154, dianne.hardy@nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Emerging Imaging Technologies and Applications Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20817, 301-827-6828, songtao.liu@nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: October 29–30, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594-1245, ivinsj@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: October 29–30, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine A. Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301-435-0657, christine.piggee@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: October 29–30, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435-1047, kkrishna@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Sensory Mechanisms.

Date: October 29–30, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408-9664, bishopj@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.

Date: October 29–30, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-435-1785, kondratyevad@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: October 29–30, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301-496-6980, izumikm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-21551 Filed 9-29-20; 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; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) and Coronavirus Disease 2019 (COVID-19).

Date: October 23, 2020.

Time: 10:30 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 3E71 Rockville, MD 20892 (Virtual Meeting).

Contact Person: Ann Marie M. Brighenti, Ph.D., Scientific Review Officer, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20852, 301-761-3100, ann-marie.brighenti@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 24, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-21575 Filed 9-29-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular Oncogenesis Study Section, October 27, 2020, 9:00 a.m. to October 28, 2020, 5:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 02, 2020, 85 FR Page 54587.

The meeting has been changed from October 7–8, 2020 to October 27–28, 2020. The meeting time and place remains the same. The meeting is closed to the public.

Dated: September 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21552 Filed 9–29–20; 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; NIAID Resource-Related Research Projects (R24 Clinical Trial Not Allowed).

Date: October 22, 2020.

Time: 1:00 p.m. to 4:00 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 3E71B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lee G. Klinkenberg, Ph.D., Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71B, Bethesda, MD 20892–9834, 301–761–7749, lee.klinkenberg@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 24, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21576 Filed 9–29–20; 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 Childhood Asthma in Urban Settings—Clinical Research Centers (U01 Clinical Trial Optional)

Date: November 17–18, 2020.

Time: 12:00 p.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 3G53, Rockville, MD 20892, (Virtual Meeting).

Contact Person: Konrad Krzewski, Ph.D. Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, 240–747–7526., konrad.krzewski@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 24, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21577 Filed 9–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection [1651–0090]

Agency Information Collection Activities: Commercial Invoice

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted no later than October 30, 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 37467) on June 22, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Commercial Invoice.

OMB Number: 1651-0090.

Form Number: None.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The collection of the commercial invoice is necessary for conducting adequate examination of merchandise and determination of the duties due on imported merchandise as required by 19 U.S.C. 1481 and 1484 and by 19 CFR 141.81, 141.82, 141.83, 141.84, 141.85, 141.86, 141.87, 141.88, 141.89, 141.90, 141.91, and 141.92. A commercial invoice is presented to CBP by the importer for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in the CBP regulations. The information is used to ascertain the proper tariff classification and valuation of imported merchandise, as required by the Tariff Act of 1930. To facilitate trade, CBP did not develop a specific form for this information collection. Importers are allowed to use their existing invoices to comply with these regulations.

Estimated Number of Respondents: 38,500.

Estimated Number of Annual Responses per Respondent: 1,208.

Estimated Number of Total Annual Responses: 46,500,000.

Estimated time per Response: 1 minute.

Estimated Total Annual Burden Hours: 744,000.

Dated: September 25, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020-21587 Filed 9-29-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0050]

Agency Information Collection Activities:

Importation Bond Structure
AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 30, 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 40307) on July 6, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Importation Bond Structure.

OMB Number: 1651-0050.

Form Number: CBP Forms 301 and 5297.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Bonds are used to ensure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of cargo and conveyances through CBP processing; and to provide legal recourse for the Government for noncompliance with laws and regulations. Bonds are required pursuant to 19 U.S.C. 1608, and 1623; 22 U.S.C. 463; 19 CFR part 113.

Each person who is required by law or regulation to post a bond in order to

secure a Customs transaction must submit the bond on CBP Form 301 which is available at: <https://www.cbp.gov/newsroom/publications/forms?title=301&=Apply>.

Surety bonds are usually executed by an agent of the surety. The surety company grants authority to the agent via a Corporate Surety Power of Attorney, CBP Form 5297. This power is vested with CBP so that when a bond is filed, the validity of the authority of the agent executing the bond and the name of the surety can be verified to the surety's grant. CBP Form 5297 is available at: <https://www.cbp.gov/document/forms/form-5297-corporate-surety-power-attorney>.

Form 301, Customs Bond

Estimated Number of Annual Respondents: 750,000.

Total Number of Estimated Annual Responses: 750,000.

Estimated time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 187,500.

Form 5297, Corporate Surety Power of Attorney

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Dated: September 25, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020-21586 Filed 9-29-20; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0131]

Agency Information Collection

Activities: e-Allegations Submission

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 30, 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:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 39206) on June 30, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of

information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: e-Allegations Submission.

OMB Number: 1651-0131.

Form Number: None.

Current Action: CBP proposes to extend the expiration date of this information collection. The time burden hours have been adjusted to account for the addition of the EAPA Allegations that have been added to this collection.

Type of Review: Extension (with change).

Affected Public: Businesses, Individuals.

Abstract: U.S. Customs and Border Protection (CBP) established the e-Allegations program in June 2008 to create a central location for the public to report allegations of trade law violations. The information provided by the public enables CBP, in collaboration with our partners, to protect our economy from the effects of unfair trade practices and guard against the entry of products that could pose a threat to health and safety. The information collected through the portal includes the name individual filing the allegation (this individual may remain anonymous), their contact information, and information pertinent to the allegation of a trade law violation.

This collection of this information is authorized by the Tariff Act of 1930, as amended (19 U.S.C.1202 *et seq.*), the Homeland Security Act of 2002 (Title 6, U.S.C. 101), and the Security and Accountability for Every Port Act of 2006 ["SAFE Port Act"] (Pub. L. 109-347, Oct. 13, 2006). The e-Allegations website is accessible at <https://www.cbp.gov/trade/e-allegations/>.

Congress passed the Enforce and Protect Act ("EAPA"), in February 2016, as a part of the Trade Facilitation and Trade Enforcement Act ("TFTEA") of 2015 (Pub. L. 114-125, Feb. 24, 2016). The EAPA legislation specifically was intended to improve trade law enforcement and duty collection for antidumping and countervailing duty orders, thus helping to create a level-playing field for U.S. businesses. To that end, CBP designed an investigative process that provides for a multi-party, transparent, on-the-record

administrative proceeding, where parties can both participate in and learn the outcome of the investigation.

The information collected through the EAPA allegation submissions portal includes the following: Filer category, name of individual filing the allegation and their contact information, the name and address of the company they represent, and their interested party designation; information related to the alleged evasion scheme, including products, type of scheme and AD/CVD Order information; the name and address of the company engaging in the alleged evasion scheme; and various certifications regarding the truthfulness of the allegation and how notifications about how the information will be used during the investigation.

The EAPA Allegation form has been modified from the original version to provide clarifying information which validates that the allegation qualifies as an EAPA allegation. Additions to the form include allexer and violating importer email and phone number, optional representing attorney contact information, and selecting the type of violation and the corresponding details. The updated form also requires users to upload at least one document to the allegation submission and select a document category in addition the existing classification for confidentiality status. Users will have the option to select additional categories including document date and if a document has been served after upload. Harmonized Tariff Schedule product categories and questions that would make an allegation non-qualifying for an EAPA allegation have been removed and replaced by system validations or additional instructions.

Collection of information for an EAPA investigation is authorized by the Tariff Act of 1930, as amended (19, U.S.C. 1517), Section 421 of the TFTEA (Pub. L. 114–125, Feb. 24, 2016), and 19 CFR 165. The EAPA portal is accessed through the e-Allegations website at <https://eallegations.cbp.gov/Home/Index2>.

e-Allegations

Estimated Number of Respondents: 1,088.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,088.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 272.

EAPA Allegations

Estimated Number of Respondents: 67.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 67.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 17.

Dated: September 25, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–21585 Filed 9–29–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2020–N113; FXRS12610900000–201–FF09R20000; OMB Control Number 1018–0140]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Hunting and Sport Fishing Application Forms and Activity Reports for National Wildlife Refuges and National Fish Hatcheries

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 30, 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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018–0140 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service

Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358–2503.

Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity 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.

On April 9, 2020, we published in the **Federal Register** (85 FR 20030) a proposed rule informing the public of our intent to request that OMB approve this information collection. We received one comment in response to the proposed rule but it did not address the information collection requirements. Therefore, no response was required.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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. 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 National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) (Recreation Act) govern the administration and public uses of national wildlife refuges, wetland management districts, and national fish hatcheries. The Administration Act closes National Wildlife Refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge and fish hatchery areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge, fisher hatchery, National Wildlife Refuge System, and National Fish Hatchery (NFH) missions. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the managed areas for the benefit of present and future generations of Americans.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses. The Recreation Act ensures the same for regulating uses of NFHs. We make provisions in our general refuge regulations (50 CFR 50 CFR parts 25, 26, 27, 30, 31, and 32) and our general hatchery regulations at (50 CFR 70, 71) for public entry for specialized purposes, including hunting and sport fishing. These regulations provide the authorities and procedures for allowing hunting and sport fishing on national wildlife refuges and wetland management districts outside the State of Alaska. We collect the information to assist us in administering these programs in accordance with statutory authorities that require that recreational uses be compatible with the primary purposes for which the areas were established.

Hunting Application/Permit

We currently use Form 3-2439, "Hunt Application/Permit" which collects the following information from individuals seeking hunting experiences on the National Wildlife Refuge System:

- *Lottery Application:* Refuges who administer hunting via a lottery system use Form 3-2439 as the lottery application. If the applicant is successful, the completed Form 3-2439 also serves as their permit application, avoiding a duplication of burden on the public by eliminating the need to fill out two separate forms.

- *Date of application:* We often have application deadlines and this information helps staff determine the order in which we received the applications. It also ensures that the information is current.

- *Methods:* Some refuges hold multiple types of hunts, *i.e.*, archery, shotgun, primitive weapons, etc. We ask for this information to identify which opportunity(ies) a hunter is applying for.

- *Species Permit Type:* Some refuges allow only certain species, such as moose, elk, or bighorn sheep to be hunted. We ask hunters to identify which species hunt they are applying for.

- *Applicant information:* We collect name, address, phone number(s), and email so we can contact the applicant/permittee either during the application process, when the applicant is successful in a lottery drawing, or after receiving a permit.

- *Party Members:* Some refuges allow the permit applicant to include additional hunters in their group. We collect the names of all additional hunters, when allowed by the refuge.

- *Parent/Guardian Contact Information:* We collect name, relationship, address, phone number(s), and email for a parent/guardian of youth hunters. We ask for this information in the event of an emergency.

- *Date:* We ask hunters for their preferences for hunt dates.

- *Hunt/Blind Location:* We ask hunters for their preferences for hunt units, areas, or blinds.

- *Special hunts:* Some refuges hold special hunts for youth, hunters who are disabled, or other underserved populations. We ask hunters to identify if they are applying for these special hunts. For youth hunts, we ask for the age of the hunter at the time of the hunt.

- *Signature and date:* To confirm that the applicant (and parent/guardian, if a youth hunter) understands the terms and conditions of the permit.

Sport Fishing Application/Permit

We use Form 3-2358, "Sport Fishing-Shrimping-Crabbing Permit Application" for sport fishing, shrimping, and crabbing activities approved for use by refuges. We collect the following information from individuals seeking sport fishing experiences:

- *Date of application:* We often have application deadlines and this information helps staff determine the order in which we received the applications. It also ensures that the information is current.

- *State fishing license number:* We ask for this information to verify the applicant is legally licensed by the State (where required).

- *Permit Type:* On sport fishing permits, we ask what type of activity (crabbing, shrimping, crabbing, frogging, etc.) is being applied for.

- *Applicant information:* We collect name, address, phone number(s), and email so we can contact the applicant/permittee either during the application process or after receiving a permit.

- *Signature and date:* To confirm that the applicant (and parent/guardian, if a youth hunter) understands the terms and conditions of the permit.

Harvest/Fishing Activity Reports

We have four harvest/fishing activity reports, depending on the species. We ask users to report on their success after their experience so that we can evaluate hunt quality and resource impacts. We use the following activity reports, which we distribute during appropriate seasons, as determined by State or Federal regulations:

- FWS Form 3-2359 (Big Game Harvest Report).

- FWS Form 3-2360 (Sport Fishing Report).

- FWS Form 3-2361 (Migratory Bird Hunt Report).

- FWS Form 3-2362 (Upland/Small Game/Furbearer Report).

The harvest/fishing activity reports collect the following information:

- *Name of refuge and location:* We ask this to track responses by location, which is important when we manage more than one refuge or activity area from one office.

- *Date:* We ask when the hunter/angler participated in the activity. This helps us identify use trends so we have resources available.

- *Hours/Time in/out:* We ask this to determine how long the hunter/angler participated in the activity. We also use this to track use so we can allocate resources appropriately.

- *Name, City, State:* We ask for a name so we can identify the user. We

ask for residence information to help establish use patterns (if users are local or traveling).

- *Number harvested/caught based on species:* We ask this to determine the impacts on wildlife/fish populations, relative success, and quality of experience.

- *Species harvested/caught:* We ask this to determine the impacts on wildlife/fish populations, relative success, and quality of experience.

Labeling/Marking Requirements

As a condition of the permit, some refuges require permittees to label hunting and/or sport fishing gear used on the refuge. This equipment may include items such as the following: Tree stands, blinds, or game cameras; hunting dogs (collars); flagging/trail markers; boats; and/or sport fishing equipment such as jugs, trotlines, and crawfish or crab traps. Refuges require the owner label their equipment with their last name, the State-issued hunting/fishing license number, and/or hunting/fishing permit number. Refuges may also require equipment for youth hunters include "YOUTH" on the label. This minimal information is necessary in the event the refuge needs to contact the owner.

Required Notifications

On occasion, hunters may find their game has landed outside of established hunting boundaries. In this situation, hunters must notify an authorized refuge employee to obtain consent to retrieve the game from an area closed to hunting or entry only upon specific consent. Certain refuges also require hunters to notify the refuge manager when hunting specific species (e.g., black bear, bobcat, or eastern coyote) with trailing dogs. Refuges encompassing privately owned refuges, referred to as "easement overlay refuges," may also require the hunter obtain written or oral permission from the landowner prior to accessing the land.

FWS Form 3-2405

FWS Form 3-2405, "Self-Clearing Check-In/Out Permit" has three parts:

- Self-Clearing Daily Check-in Permit. Each user completes this portion of the form (date of visit, name, and telephone numbers) and deposits it in the permit box prior to engaging in any activity on the refuge.

- Self-Clearing Daily Visitor Registration Permit. Each user must complete the front side of the form (date, name, city, State, zip code, and purpose of visit) and carry this portion while on the refuge. At the completion of the visit, each user must complete the reverse side of the form (number of hours on refuge, harvest information (species and number), harvest method, angler information (species and number), and wildlife sighted (e.g., black bear and hog) and deposit it in the permit box.

- Self-Clearing Daily Vehicle Permit. The driver and each user traveling in the vehicle must complete this portion (date) and display in clear view in the vehicle while on the refuge.

We use FWS Form 3-2405 to collect:

- Information on the visitor (name, address, and contact information). We use this information to identify the visitor or driver/passenger of a vehicle while on the refuge. This is extremely valuable information should visitors become lost or injured. Law enforcement officers can easily check vehicles for these cards in order to determine a starting point for the search or to contact family members in the event of an abandoned vehicle. Having this information readily available is critical in a search and rescue situation.

- Purpose of visit (hunting, sport fishing, wildlife observation, wildlife photography, auto touring, birding, hiking, boating/canoeing, visitor center, special event, environmental education class, volunteering, other recreation). This information is critical in determining public use participation in wildlife management programs. This not only allows the refuge to manage its

hunt and other visitor use programs, but also to increase and/or improve facilities for non-consumptive uses that are becoming more popular on refuges. Data collected will also help managers better allocate staff and resources to serve the public as well as develop annual performance measures.

- Success of harvest by hunters/ anglers (number and type of harvest/ caught). This information is critical to wildlife management programs on refuges. Each refuge will customize the form by listing game species and incidental species available on the refuge, hunting methods allowed, and data needed for certain species (e.g., for deer, whether it's a buck or doe and the number of points; or for turkeys, the weight and beard and spur lengths).

- Whether or not visitors observed black bear or hogs, for example. This information will help managers develop annual performance measures for hog removal and it provides information to help develop resource management planning.

- Photograph of animal harvested (specific refuges only). This requirement documents the sex of animal prior to the hunter being eligible to harvest the opposite sex (where allowed).

- Date of visit and/or area visited.
- Comments. We encourage visitors to comment on their experience.

Title of Collection: Hunting and Sport Fishing Application Forms and Activity Reports for National Wildlife Refuges and National Fish Hatcheries (50 CFR parts 25, 26, 27, 30, 31, 32, and 71).

OMB Control Number: 1018-0140.

Form Number: FWS Forms 3-2405, 3-2439, and 3-2358 through 3-2362.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and households.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$85,964 associated with application fees.

Activity	Annual number of responses	Completion time per response	Total annual burden hours *
Hunting and Sport Fishing Permit Applications			
Form 3-2439 Hunt Application/Permit	355,663	10 minutes	59,277
Form 3-2358 Fish/Crab/Shrimp Application/Permit	2,521	5 minutes	210
Subtotal Applications	358,184	.....	59,487
Harvest Activity Reports			
Form 3-2359 Big Game Harvest Report	93,717	15 minutes	23,429
Form 3-2360 Sport Fishing Harvest Report	429,534	15 minutes	107,384
Form 3-2361 Migratory Bird Harvest Report	33,477	15 minutes	8,369

Activity	Annual number of responses	Completion time per response	Total annual burden hours*
Form 3–2362 Upland Game Furbearer Harvest Report	25,524	15 minutes	6,381
Subtotal Activity Reports	582,252	.....	145,563
New Information Collections Added to Collection			
Labeling/Marking Requirements	2,203	10 minutes	367
Required Notifications	433	30 minutes	217
Form 3–2405 Check-In/Out Permit	663,000	5 minutes	55,250
Subtotal Other Requirements	665,636	.....	55,834
Totals	1,606,072	.....	260,884

* Rounded.

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.*).

Dated: September 25, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–21626 Filed 9–29–20; 8:45 am]

BILLING CODE 4333–15–

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0160]

Agency Information Collection Activities; Verification of Indian Preference for Employment in BIA and IHS

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 30, 2020.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 4513 MIB, Washington, DC 20240; facsimile: (202) 208–5113; email: laurel.ironcloud@bia.gov. Please

reference OMB Control Number 1076–0160 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Laurel Iron Cloud, telephone (202) 513–7641.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity 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 soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

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 BIA is seeking renewal of the approval for the information collection conducted under 25 U.S.C. 43, 36 Stat. 472, *inter alia*, and implementing regulations, at 25 CFR part 5, regarding verification of Indian preference for employment. The purpose of Indian preference is to encourage qualified Indian persons to seek employment with the BIA and Indian Health Service (IHS) by offering preferential treatment to qualified candidates of Indian heritage. BIA collects the information to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and IHS. The tribe’s involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform functions formerly performed as part of the BIA and IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian Tribe; (b) you are a descendent of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska native; or (d) you possess one-half degree Indian blood derived from Tribes that are indigenous to the United States.

Title of Collection: Verification of Indian Preference for Employment in BIA and IHS.

OMB Control Number: 1076–0160.
Form Number: BIA 4432.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Qualified Indian persons who are seeking preference in employment with the BIA and IHS.

Total Estimated Number of Annual Respondents: 5,000 per year, on average.

Total Estimated Number of Annual Responses: 5,000 per year, on average.

Estimated Completion Time per Response: 30 minutes.

Total Estimated Number of Annual Burden Hours: 2,500 hours.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$6,920.

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.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2020-21559 Filed 9-29-20; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/
AOA501010.999900 253G; OMB Control
Number 1076-0153]

Agency Information Collection Activities; Certificate of Degree of Indian or Alaska Native Blood

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 30, 2020.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 4513 MIB, Washington, DC 20240; facsimile: (202) 208-5113; email: laurel.ironcloud@bia.gov. Please reference OMB Control Number 1076-

0153 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Laurel Iron Cloud, telephone (202) 513-7641.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity 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 soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

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 BIA is seeking renewal of this information collection conducted under the numerous laws authorizing BIA to administer program services to Indians, provided that the individual possess a minimum degree of Indian or Alaska Native blood. When applying for program services authorized by these laws, an applicant must provide acceptable documentation to prove that he or she meets the minimum required degree of Indian or Alaska Native blood. Currently, the BIA certifies an individual's degree of Indian or Alaska Native blood if the individual can provide sufficient information to prove

his or her identity and prove his or her descent from an Indian ancestor(s) listed on historic documents approved by the Secretary of the Interior that include blood degree information. To obtain the Certificate of Degree of Indian or Alaska Native Blood, the applicant must fill out an application form and provide supporting documents.

Title of Collection: Request for Certificate of Degree of Indian or Alaska Native Blood.

OMB Control Number: 1076-0153.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 100,000 per year, on average.

Total Estimated Number of Annual Responses: 100,000 per year, on average.

Estimated Completion Time per Response: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 150,000.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: \$400,000.

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.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2020-21558 Filed 9-29-20; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/
AOA51010.999900]

Land Acquisitions; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 1,427.78 acres, more or less, (commonly known as "Camp 4") into trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California. Congress affirmed that this property is

to be taken into trust by enacting the Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019.

DATES: This final determination was made on September 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS 4620-MIB, Washington, DC 20240, telephone (505) 563-3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual, and is published to comply with the requirement of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly published in the **Federal Register**.

On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 5108. On December 20, 2019, Congress affirmed that this property is to be taken into trust by enacting § 2868, the Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019, in the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92.

Legal Description

PARCEL 1: (APN: 141-121-51 AND PORTION OF APN: 141-140-10)

LOTS 9 THROUGH 18, INCLUSIVE, OF TRACT 18, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105580 OF OFFICIAL RECORDS.

PARCEL 2: (PORTION OF APN: 141-140-10)

LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 24, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105581 OF OFFICIAL RECORDS.

PARCEL 3: (PORTIONS OF APNS: 141-230-23 AND 141-140-10)

LOTS 19 AND 20 OF TRACT 18 AND THAT PORTION OF LOTS 1, 2, 7, 8, 9, 10, AND 15 THROUGH 20, INCLUSIVE, OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105582 OF OFFICIAL RECORDS.

PARCEL 4: (APN: 141-240-02 AND PORTION OF APN: 141-140-10)

LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 25, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105583 OF OFFICIAL RECORDS.

PARCEL 5: (PORTION OF APN: 141-230-23)

THAT PORTION OF LOTS 3 AND 6 OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF

COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105584 OF OFFICIAL RECORDS.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020-21537 Filed 9-29-20; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[201D0102DM. DS62600000.
DLSN00000.000000. DX62601]

Department-Wide Transition to Use of GrantSolutions Award Management System for Managing Financial Assistance Awards; Correction

AGENCY: Office of Grants Management, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior (DOI) published a notice in the **Federal Register** on April 9, 2020 concerning the transitioning of all bureaus and offices to using the GrantSolutions award management system to manage financial assistance awards. The dates provided in the original notice published on April 9, 2020 were modified.

FOR FURTHER INFORMATION CONTACT: Cara Whitehead, Director, (202) 208-3466, Cara_Whitehead@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 9, 2020, in FR Doc. 2020-07389, on page 19954, in the third column, change the “Group C transition date” from December 7, 2020 to November 30, 2020.

DATES: The revised Group C transition date is November 30, 2020. Group C includes the following bureaus, Departmental offices, and their recipients: Bureau of Indian Affairs/ Bureau of Indian Education, Bureau of Land Management, Bureau of Reclamation, Departmental Offices, Office of Surface Mining Reclamation and Enforcement, and the U.S. Geological Survey, and their recipients.

DOI recipients are encouraged to visit the DOI GrantSolutions system transition website at <https://www.doi.gov/grants/grantsolutions> or contact their designated bureau or office

financial assistance award contact for more information on the transition.

Cara Whitehead,

Director, Office of Grants Management.

[FR Doc. 2020-21562 Filed 9-29-20; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-DTS#-30887;
PPWOCRADIO, 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 12, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by October 15, 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 12, 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:

TEXAS

Nueces County

Old Bayview Cemetery, Ramirez St. at Padre St., Corpus Christ, SG100005689

Sterling County

Sterling City Gulf, Colorado & Santa Fe Railway Passenger Depot, (Gulf, Colorado and Santa Fe Railway Depots of Texas MPS), 415 Stadium Ave., Sterling City, MP100005690

Additional documentation has been received for the following resources:

ALABAMA

Mobile County

Bishop Manor Estate (Additional Documentation), Argyl Rd., St. Elmo, AD85000255

OHIO

Cuyahoga County

May Company (Additional Documentation), 158 Euclid Ave. at Public Sq., Cleveland, AD74001443

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.

PUERTO RICO

Arecibo Municipality

National Astronomy and Ionosphere Center (Additional Documentation), Esperanza Ward, San Rafael Sector, Rd. 625, Arecibo vicinity, AD07000525

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 15, 2020.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2020-21584 Filed 9-29-20; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0019]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Federal Firearms License (FFL) RENEWAL Application—ATF Form 8 (5310.11) Part II

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until October 30, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Federal Firearms License (FFL) RENEWAL Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 8 (5310.11) Part II.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.
Other: Individuals or households.

Abstract: The Federal Firearms License (FFL) RENEWAL Application—ATF Form 8 (5310.11) Part II is used by members of the public to renew a Federal firearms license (FFL). The collected information is used to identify the FFL business premises and/or firearm collection activity, and determine the applicant's eligibility for a FLL renewal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 34,000 respondents will utilize the form annually, and it will take each respondent 30 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 17,000 hours, which is equal to 34,000 (# of respondents) * 1 (total responses per respondent) * .5 (30 minutes).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this information collection include a decrease in the total respondents and burden hours by 1,000 and 500 hours respectively, since the last renewal in 2018. Due to a slight increase in the postage costs from .49 cents to .55 cents currently, the total cost burden has increased by \$1,550, since 2018.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 25, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020-21595 Filed 9-29-20; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 005-2020]

Privacy Act of 1974; Systems of Records

AGENCY: Office of Attorney Recruitment and Management, Justice Management Division, United States Department of Justice.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and

Budget (OMB) Circular No. A-108, notice is hereby given that the Office of Attorney Recruitment and Management (OARM), a component within the United States Department of Justice (DOJ or Department), proposes to modify a system of records notice titled "Federal Bureau of Investigation Whistleblower Case Files, JMD-023." The component proposes to make modifications in the "System Location," "Categories of Individuals Covered by the System," "Categories of Records in the System," "Authority for Maintenance of the System," "Purposes," and "System Manager(s) and Address" sections of the notice.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Therefore, please submit any comments by October 30, 2020.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments: By mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 2 Constitution Square, 145 N Street NE, Washington, DC 20002; by facsimile at 202-307-0693; or by email at privacy.compliance@usdoj.gov. To ensure proper handling, please reference the above CPCLO Order Number on your correspondence.

FOR FURTHER INFORMATION CONTACT: Hilary S. Delaney, Assistant Director, OARM, 450 5th Street NW, Suite 10200, Washington, DC 20530, Hilary.S.Delaney@usdoj.gov.

SUPPLEMENTARY INFORMATION: Under 28 CFR part 27, an FBI employee or applicant who believes he or she has suffered a reprisal for making a protected disclosure may report the reprisal in writing to the Department's Office of Professional Responsibility (OPR) or Office of the Inspector General (OIG). The office that investigates the whistleblower reprisal complaint is known as the "Conducting Office." If the Conducting Office investigates the complaint and determines that there are reasonable grounds to believe that there has been a reprisal for a protected disclosure, the Conducting Office reports its conclusion to OARM, along with any findings and recommendations for corrective action. Alternatively, a complainant may file a request for corrective action with OARM within 60 calendar days upon notification by the Conducting Office that the investigation has been concluded. If the Conducting Office fails to notify the complainant, the complainant may seek corrective action with OARM any time after 120

calendar days from the filing of a complaint. Within 30 calendar days of a final determination or corrective action order by OARM, either party (*i.e.*, the complainant, and/or his or her designated representative, if any; and the FBI's Office of General Counsel (FBI OGC)) may request review by the Deputy Attorney General (DAG).

A complainant may pursue mediation through the Department's FBI Whistleblower Mediation Program any time during the processing of a complaint (whether at the Conducting Office level or before OARM or the DAG). OARM is responsible for adjudicating any claim involving an alleged breach of a settlement agreement reached by the parties during their participation in the FBI Whistleblower Mediation Program, and OARM's decision on a claim of any such alleged breach may be appealed to the DAG within 30 calendar days of OARM's decision.

On September 7, 2005, pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), OARM published a notice of a new system of records entitled "Federal Bureau of Investigation, Whistleblower Case Files, JMD-023" (70 FR 53253). The system maintains all documents and evidence submitted to OARM and the DAG filed in FBI whistleblower reprisal claims. The records are used by OARM and the DAG in their respective authorities to adjudicate claims of whistleblower reprisal brought by former or current employees of, or applicants for employment with, the FBI, pursuant to 28 CFR part 27. The purpose of this notice of modification is to update administrative details that have changed since the 2005 publication of 70 FR 53253, including the recently adopted procedures involving reviews by OARM and the DAG of a party's claim of a breach of a settlement agreement reached by the parties during their participation in the Department's FBI Whistleblower Mediation Program.

Privacy Act exemptions are claimed for this system pursuant to 28 CFR 16.76, however the exemptions are unchanged from the original publication of this SORN.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: September 23, 2020.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/JMD-023

SYSTEM NAME AND NUMBER:

Federal Bureau of Investigation Whistleblower Case Files, Justice/JMD-023.

SECURITY CLASSIFICATION:

The records in the system are generally sensitive but unclassified, although there may be situations when national security/foreign policy classified information is included in a specific matter.

* * * * *

SYSTEM LOCATION:

[Delete existing paragraph and replace with the following:]

Records in this system are located at the Department of Justice, OARM, 450 5th Street NW, Suite 10200, Washington, DC 20530.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[Delete existing paragraph and replace with the following:]

The system of records covers any former or current employee of, or applicant for employment with, the FBI who has filed a request for corrective action with OARM pursuant to 28 CFR part 27, or for whom the Conducting Office (*i.e.*, either OIG or OPR) has presented a Report of Investigation finding that there are reasonable grounds to believe a reprisal has or will be taken, and/or made a recommendation for corrective action to OARM. The system of records also covers any former or current employee of the FBI who has participated in the Department's FBI Whistleblower Mediation Program and filed a claim of a breach of a settlement agreement with OARM.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

[Delete existing paragraph and replace with the following:]

The records in the system relate to OARM's adjudication of FBI whistleblower reprisal claims under 28 CFR part 27 and customarily include: (1) The complainant's request for corrective action; (2) OIG/OPR Reports of Investigation and any recommendation for corrective action; (3) the parties' pleadings and evidentiary submissions (*e.g.*, affidavits, depositions, audio/visual DVDs, electronic communications, etc.); (4)

correspondence between OARM and the parties and OARM and OIG/OPR; (5) OARM Orders and Opinions; and/or (6) settlement agreements.

The records in the system also include: (1) The parties' pleadings and evidentiary submissions presented to OARM for adjudication of any claim of a breach of a settlement agreement reached through the parties' participation in the Department's FBI Whistleblower Mediation Program; (2) OARM's decisional or procedural issuances in breach of settlement agreement cases; and (3) appellate materials presented to, and used by, the DAG in adjudicating a party's request for review of OARM's final determinations and corrective action orders brought under 28 CFR 27.5, as well as any request for review of a decision by OARM in a breach of settlement agreement case.

* * * * *

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

[Delete existing paragraph and replace with the following:]

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 2303; 28 CFR part 27.

* * * * *

PURPOSE(S):

[Delete existing paragraph and replace with the following:]

The records in the system are used: (1) By OARM to determine whether the complainant made a protected disclosure that was a contributing factor in the FBI's decision to take or fail to take, or threaten to take or fail to take, a covered personnel action against the complainant, and, if so, what, if any corrective action can and should be appropriately ordered; (2) by OARM to determine whether there has been a breach by a party of a settlement agreement reached through the parties' participation in the Department's FBI Whistleblower Mediation Program, and, if so, whether the agreement shall be set aside or enforced; and (3) by the DAG in adjudicating requests for review of OARM's final determinations and/or corrective action orders in reprisal cases, as well as OARM's decisions in cases involving a claim of a breach of settlement agreement.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[Delete existing paragraph and replace with the following:]

Assistant Director, OARM, 450 5th Street NW, Suite 10200, Washington, DC 20530.

* * * * *

HISTORY:

70 FR 53253 (Sept. 7, 2005), 72 FR 15906 (April 3, 2007), 72 FR 30631 (June 1, 2007); 82 FR 24147 (May 25, 2017).

[FR Doc. 2020-21633 Filed 9-29-20; 8:45 am]

BILLING CODE 4410-PB-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Certification and Release of Records

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until October 30, 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.

If you need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305-0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

- including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* New Optional Collection.
2. *The Title of the Form/Collection:* Certification and Release of Records.
3. *The Agency Form Number:* Form EOIR-59. The applicable component within the Department of Justice is the Office of the General Counsel, Executive Office for Immigration Review.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
 - Primary: Individuals.
 - Other: None.

Abstract: This information collection is necessary to prevent unauthorized disclosure of records of individuals maintained by the Department of Justice, and allows parties who are, or were, in proceedings before EOIR to disclose or release their records to an attorney, accredited representative, qualified organization, or other third party.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are 50,596 respondents, 50,596 annual responses, and that each response takes 10 minutes to complete.
6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 8,433 hours. It is estimated that respondents will take 10 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 8,433 hours (50,596 respondents × 10 minutes per response = 8,433 hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: September 25, 2020.
Melody Braswell,
Department Clearance Officer for PRA, U.S. Department of Justice.
 [FR Doc. 2020-21618 Filed 9-29-20; 8:45 am]
BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgment Under The Clean Air Act

On September 24, 2020, the Department of Justice lodged a proposed consent judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America v. Town of Brookhaven, New York*, Case No. 2:20-CV-4522.

The United States filed this lawsuit to seek civil penalties and injunctive relief for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* (“CAA”). The alleged violations stem from the Town of Brookhaven’s (“Brookhaven”) failure to comply with the CAA’s New Source Performance Standards for landfills, the National Emission Standards for Hazardous Air Pollutants for landfills, and provisions of the Town’s Title V operating permit.

The Consent Judgment requires Brookhaven to implement injunctive relief that includes: (i) Proper operation of its landfill gas and sulfur dioxide control systems; (ii) installation and operation of a hydrogen sulfide gas monitoring system; (iii) conducting a survey of, and then addressing, high temperatures within the landfill; and (iv) installation and operation of a new taller flare. Further, Brookhaven will install a 350-panel solar energy conversion system. The Consent Judgment also requires Brookhaven to pay a civil penalty of \$249,166.

The publication of this notice opens a period for public comment on the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Town of Brookhaven, New York*, Civil Action No. 2:20-CV-4522, D.J. Ref. No. 90-5-2-1-09884/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>

To submit comments:	Send them to:
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Judgment may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Judgment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$43.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
 [FR Doc. 2020-21548 Filed 9-29-20; 8:45 am]
BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Agency Information Collection Activities; Comment Request; Generic Solution for “Touch-Base” Activities

ACTION: Notice.

AGENCY: Department of Labor.
SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, “Department of Labor Generic Solution for “Touch-Base” Activities.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by November 30, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Crystal Rennie by telephone at (202) 693-0456, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of the Assistant Secretary for Administration, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Crystal Rennie by telephone at (202) 693-0456, TTY 202-693-8064, (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner. Feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues interest, or focus attention on areas where communication, training, or changes in operations or policy might improve delivery of products, services, or Federal policy. These collections will allow for ongoing, collaborative, and actionable communications between the DOL and its customers and stakeholders. Information collected will also allow feedback to contribute directly to the improvement of program management.

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 under the PRA 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 Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written

comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1225-0059.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-OASAM.

Type of Review: Extension.

Title of Collection: Department of Labor Generic Solution for "Touch-Base" Activities.

OMB Control Number: 1225-0059.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Estimated Number of Respondents: 800,000.

Frequency: Annual.

Total Estimated Annual Responses: 800,000.

Estimated Average Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 80,000 hours.

Total Estimated Annual Other Cost Burden: \$0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020-21540 Filed 9-29-20; 8:45 am]

BILLING CODE 4510-04-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 20-07]

Renewal of the MCC Economic Advisory Council and Call for Nominations

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) has renewed the charter for the MCC Economic Advisory Council (EAC) and is hereby soliciting representative nominations for the 2020-2022 term. The EAC serves MCC in an advisory capacity only and provides insight to sharpen MCC's analytical capacity and ensure continued expertise on relevant issues related to economic development. The EAC provides a platform for engagement with economic development and evaluation experts and contributes to MCC's mission to reduce poverty through economic growth. MCC will use the advice, recommendations, and guidance from the EAC to (i) inform threshold, compact, and concurrent regional compact development, implementation, and results measurement procedures, and (ii) assess future policy innovations and methodologies at MCC. The MCC Vice President of the Department of Policy and Evaluation affirms that the EAC is necessary and in the public interest. The EAC is seeking members to comprise a diverse group of recognized thought leaders and experts representing academic institutions, think tanks, donor organizations, and development banks. Additional information about MCC and its portfolio can be found at www.mcc.gov.

DATES: Nominations for EAC members must be received on or before 5:00 p.m. EST on November 12, 2020. Further information about the nomination process is included below. MCC plans to host the first meeting of the 2020-2022 term of the EAC in early 2021. The EAC will meet at least one time per year in Washington, DC or via video/teleconferencing. Members who are unable to attend in-person meetings may have the option to dial-in via video/teleconferencing.

SUPPLEMENTARY INFORMATION: The EAC shall consist of not more than twenty (20) individuals who are recognized experts in their field, academics, innovators, and thought leaders, representing academic organizations,

independent think tanks, international development agencies, multilateral and regional development financial institutions, and foundations. Efforts will be made to include expertise from countries and regions where MCC operates, within the resource constraints of MCC to support logistic costs. Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the EAC, nominators should submit the following information:

- Name, title, organization and relevant contact information (including phone, mailing address, and email address) of the individual under consideration;
- A letter containing a brief biography for the nominee and description why the nominee should be considered for membership;
- CV including professional and academic credentials;

Please do not send company, or organization brochures or any other information. Materials submitted should total two pages or less, excluding CV. Should more information be needed, MCC staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources.

All members of the EAC will be independent of the agency, representing the views and interests of their respective institution or area of expertise, and not as Special Government employees. All members shall serve without compensation. The duties of the EAC are solely advisory and any determinations to be made or actions to be taken on the basis of EAC advice shall be made or taken by appropriate officers of MCC.

Nominees selected for appointment to the EAC will be notified by return email and receive a letter of appointment. A selection team will review the nomination packages and make recommendations regarding membership to the MCC Vice President of the Department of Policy and Evaluation based on criteria including: (1) Professional experience, and knowledge; (2) academic field and expertise; (3) experience within regions in which MCC works; (4) contribution of diverse regional or technical professional perspectives, and (5) availability and willingness to serve. Based upon the selection team's recommendations, the MCC Vice President of the Department of Policy and Evaluation will select representatives.

In the selection of members for the EAC, MCC will seek to ensure a balanced representation and consider a

cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the EAC.

Nominations are open to all individuals without regard to race, color, religion, sex, gender, national origin, age, mental or physical disability, marital status, sexual orientation, or location.

FOR FURTHER INFORMATION CONTACT:

Nominators are asked to send all nomination materials by email to MCCEACouncil@mcc.gov. While email is strongly preferred, nominators may send nomination materials by mail to Millennium Challenge Corporation, Attn: Mesbah Motamed, Designated Federal Officer, MCC Economic Advisory Council, 1099 14th St. NW, Suite 700, Washington, DC 20005. Request for additional information can also be directed to Mesbah Motamed, 202.521.7874, MCCEACouncil@mcc.gov.

Authority: Federal Advisory Committee Act, 5 U.S.C. App.

Dated: September 23, 2020.

Jeanne M. Hauch,

VP/General Counsel and Corporate Secretary.

[FR Doc. 2020-21557 Filed 9-29-20; 8:45 am]

BILLING CODE 9211-03-P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Written comments should be received on or before October 30, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by contacting Mackie Malaka

at (703) 548-2704, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0040.

Title: Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises, 12 CFR 701.36.

Type of Review: Extension of a currently approved collection.

Abstract: The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations under Section 107(4). NCUA Rules and Regulations implements this statute by including three parts to the information collection associated with the rule: Waiver of requirement for partial occupation, waiver of requirement to dispose of abandoned property and waiver of prohibited transactions. NCUA responds to the waivers by either granting or denying the request, or otherwise compromising to meet the needs of the credit union without raising safety and soundness concerns.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 30.

OMB Number: 3133-0127.

Title: Purchase, Sale and Pledge of Eligible Obligations, 12 CFR 701.23.

Type of Review: Extension of a currently approved collection.

Abstract: The Federal Credit Union Act limits the amount of eligible obligations a federal credit union (FCU) is permitted to purchase, sell, pledge, discount, receive or dispose of under Section 107(13), 12 U.S.C. 107. NCUA's rules and regulations further govern this limitation by prescribing additional requirements under § 701.23. The various information collections are in place to ensure a FCU's activities related to the purchase, sale, and pledge of eligible obligations comply with applicable laws and are conducted in a safe and sound manner.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 12,748.

OMB Number: 3133-0141.

Title: Organization and Operation of Federal Credit Unions—Loan Participations, 12 CFR 701.22.

Type of Review: Extension of a currently approved collection.

Abstract: NCUA rules and regulations, §§ 701.22 and 741.225, outline the requirements for a loan participation program. Federally insured credit unions (FICU) are required to execute a

written loan participation agreement with the lead lender. Additionally, the rule requires all FICUs to maintain a loan participation policy that establishes underwriting standards and maximum concentration limits. Credit unions may apply for waivers on certain key provisions of the rule. NCUA reviews the loan participation policies and through these reviews determine whether the credit union is engaging in a safe and sound loan participation program.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 3,025.

OMB Number: 3133–0189.

Title: Contractor Budget and Contractor Representation and Certification.

Form: NCUA 3249a and 3249b.

Type of Review: Extension of a currently approved collection.

Abstract: Standardized information from prospective outside counsel is essential to the NCUA in carrying out its responsibility as regulator, conservator, and liquidating agent for federally insured credit unions. The information will enable the NCUA to further standardize the data it uses to select outside counsel, consider additional criteria in making its selections, and improve efficiency and recordkeeping related to its selection process.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Annual Burden Hours: 200.

OMB Number: 3133–0061.

Title: Central Liquidity Facility, 12 CFR part 725.

Forms: NCUA Forms 7001, 7002, 7003, 7004, 8700C, CLF 8702, and CLF 8703.

Type of Review: Extension of currently approved collection.

Abstract: Part 725 contains the regulations implementing the National Credit Union Central Liquidity Facility Act, subchapter III of the Federal Credit Union Act. The NCUA Central Liquidity Facility is a mixed-ownership Government corporation within NCUA. It is managed by the NCUA Board and is owned by its member credit unions. The purpose of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encourage savings, support consumer and mortgage lending and provide basic financial resources to all segments of the economy. The Central Liquidity Facility achieves this purpose through operation of a Central Liquidity Fund (CLF). The collection of information under this part is necessary

for the CLF to determine credit worthiness, as required by 12 U.S.C 1795e(2).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 691.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on September 24, 2020.

Dated: September 24, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020–21567 Filed 9–29–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 4 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov*, or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Dance (review of applications): This meeting will be closed.

Date and time: October 28, 2020; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: October 28, 2020; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: October 29, 2020; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: October 29, 2020; 3:00 p.m. to 5:00 p.m.

Dated: September 25, 2020.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2020–21579 Filed 9–29–20; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–20–008–EA; ASLBP No. 20–968–04–EA–BD01]

In The Matter of Joseph Shea; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Joseph Shea (Enforcement Action)

This Board is being established pursuant to a filing on behalf of Joseph Shea consisting of (1) a hearing request to challenge an enforcement order prohibiting Mr. Shea from involvement in NRC-licensed activities for five years; and (2) a motion to set aside the immediate effectiveness of that order.¹ The challenged order, issued on August 24, 2020 by the NRC Office of Enforcement, was published in the **Federal Register** on August 28, 2020. *See* 85 FR 53,423 (Aug. 28, 2020).

The Board is comprised of the following Administrative Judges: William J. Froehlich, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Michael M. Gibson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

¹ *See* Joseph Shea's Motion to Set Aside the Immediate Effectiveness of an Order Banning Him from Engaging in NRC-Licensed Activities, Answer, and Request for Hearing (Sept. 22, 2020).

Dr. Gary Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. See 10 CFR 2.302.

Rockville, Maryland.

Dated: September 24, 2020.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2020-21578 Filed 9-29-20; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020-255 and CP2020-285]

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:* October 2, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. 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).*: MC2020-255 and CP2020-285; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 169 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 24, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 2, 2020.

This Notice will be published in the **Federal Register**.

Mallory Smith,

Federal Register Liaison.

[FR Doc. 2020-21609 Filed 9-29-20; 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 Express and 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 30, 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 25, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 118 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-256, CP2020-286.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-21645 Filed 9-29-20; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & 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 30, 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 18, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 72 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2020–251, CP2020–281.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–21641 Filed 9–29–20; 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 30, 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 17, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 663 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020–250, CP2020–280.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–21640 Filed 9–29–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and 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 30, 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 16, 2020, it filed with the Postal Regulatory

Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 117 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020–247, CP2020–277.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–21637 Filed 9–29–20; 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 30, 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 24, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 169 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020–255, CP2020–285.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–21644 Filed 9–29–20; 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 30, 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 17, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 661 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020–248, CP2020–278.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–21638 Filed 9–29–20; 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 30, 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 17, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 662 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020–249, CP2020–279.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–21639 Filed 9–29–20; 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 30, 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 22, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 664 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-253, CP2020-283.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-21642 Filed 9-29-20; 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 30, 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 22, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 168 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-254, CP2020-284.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-21643 Filed 9-29-20; 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 30, 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 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 659 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-245, CP2020-275.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-21635 Filed 9-29-20; 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 30, 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 16, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 660 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-246, CP2020-276.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-21636 Filed 9-29-20; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0178, SEC File No. 270-173]

Proposed Collection; Comment Request

Extension:

Rule 31a-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension.

Rule 31a-1 (17 CFR 270.31a-1) under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a) is entitled "Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies." Rule 31a-1 requires registered investment companies ("funds"), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act (15 U.S.C. 80a-30) and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws.

There are approximately 3,964 investment companies registered with the Commission, all of which are required to comply with rule 31a-1. For purposes of determining the burden imposed by rule 31a-1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a-1. Based on conversations with fund representatives, it is estimated that rule 31a-1 imposes an average burden of approximately 1,750 hours annually per series for a total of 7,000 annual hours per fund. The estimated total annual burden for all 3,964 funds subject to the rule therefore is approximately 27,748,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a-1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business practice and to prepare financial statements. Thus, the Commission staff estimates that the total annual burden associated with rule 31a-1 is 2,774,800 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: September 24, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-21541 Filed 9-29-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on October 5, 2020, at 9:30 a.m. (ET).

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at www.sec.gov.

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public via webcast. The Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: On September 15, 2020, the Commission

issued notice of the Committee meeting (Release No. 34-89868), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee.

The agenda for the meeting will include a potential recommendation concerning TRACE identification of electronic trades, subcommittee observations and lessons learned in the corporate bond market, the bond fund and ETF market, the technology and e-trading markets, and the municipal securities markets, as well as member observations of the fixed income markets.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: September 28, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-21725 Filed 9-28-20; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89994; File No. SR-MSRB-2020-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to the MSRB's Amended and Restated Articles of Incorporation

September 24, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 15, 2020 the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of amendments to its Amended and Restated Articles of Incorporation ("Articles of Incorporation") to conform the Articles of Incorporation to recently-

amended MSRB Rule A-3, on Board membership ("Rule A-3") (the "proposed rule change"). The MSRB has designated the proposed rule change as "concerned solely with the administration of the self regulatory organization" under Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(3)⁴ thereunder, which renders the proposal effective upon filing with the Commission.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

On August 5, 2020, the Commission approved a proposed rule change that included amendments to Rule A-3.⁵ Among other things, the amendments reduced the Board's size from 21 to 15 members through a transition plan,⁶ modified the Board's class structure to reflect the reduction in Board size, and permitted a Board member filling a vacancy to serve for any part of an unexpired term, rather than requiring such a Board member to serve for the entire unexpired portion.

The Articles of Incorporation include provisions relating to Board size, class structure, and Board terms, which the proposed rule change would amend to conform to amended Rule A-3. To reflect the reduced Board size and modified class structure, the proposed rule change would amend the Articles

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ Exchange Act Release No. 89484 (Aug. 5, 2020), 85 FR 48579 (Aug. 11, 2020) (File No. SR-MSRB-2020-04).

⁶ Pursuant to the transition plan, the Board will include 17 members during fiscal year 2021 and 15 members thereafter.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of Incorporation to refer to the By-Laws of the MSRB (“Bylaws”), which restate Rule A–3,⁷ for the specific number of directors on the Board and details regarding the Board’s class structure. The Virginia Nonstock Corporation Act,⁸ pursuant to which the MSRB is organized under Virginia law, does not require the specific number of directors to be set forth in the Articles of Incorporation⁹ and the reference to the Bylaws for the specific number of directors and details regarding the Board’s class structure would ensure consistency between the Articles of Incorporation and the Bylaws throughout the transition period and thereafter.

To incorporate amended Rule A–3’s provision permitting a Board member filling a vacancy to serve for any part of an unexpired term, the proposed rule change would amend the Articles of Incorporation to incorporate the relevant language from amended Rule A–3.

The proposed rule change will become operative on October 1, 2020, at the same time as the recently approved amendments to Rule A–3.¹⁰ The MSRB will file the Articles of Incorporation with the Commonwealth of Virginia in accordance with Virginia law.

Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(I) of the Exchange Act,¹¹ which provides that the MSRB’s rules shall:

provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board’s functions under this section.

The proposed rule change is consistent with Section 15B(b)(2)(I) of the Exchange Act¹² because it provides for the operation and administration of

⁷ Specifically, Article 3 of the By-Laws restates Rule A–3.

⁸ Va. Code Ann. §§ 13.1–801 *et seq.* (2016).

⁹ Va. Code Ann. § 13.1–855(A) (2016) (“A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation.”).

¹⁰ Separately, the MSRB is also filing a proposed rule change consisting of additional amendments to Rule A–3 and amendments to MSRB Rule A–4 relating to Board quorum, meeting and voting requirements which would also become operative on October 1, 2020.

¹¹ 15 U.S.C. 78o–4(b)(2)(I).

¹² *Id.*

the Board in that it ensures that applicable provisions of Rule A–3 are properly reflected in the Articles of Incorporation. Specifically, the amendments to the Articles of Incorporation relating to the Board’s size, the structure of the Board’s classes, and vacancy terms are consistent with Section 15B(b)(2)(I) of the Exchange Act¹³ because such amendments conform the Articles of Incorporation to amended Rule A–3, providing for operational and administrative consistency between the Articles of Incorporation and amended Rule A–3.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹⁴ The proposed rule change relates only to the administration of the Board and would not impose requirements on dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f) of Rule 19b–4 thereunder.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹³ *Id.*

¹⁴ 15 U.S.C. 78o–4(b)(2)(C).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b–4(f).

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–MSRB–2020–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2020–06. 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 MSRB. 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–MSRB–2020–06 and should be submitted on or before October 21, 2020.

For the Commission, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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BILLING CODE 8011–01–P

¹⁷ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89991; File No. SR-MIAX-2020-31]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism To Adopt a New ISO Prime Order Type

September 24, 2020.

Pursuant to the provisions of 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 17, 2020, Miami International Securities Exchange, LLC (“MIAX Options” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options’ principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, to adopt a new ISO PRIME order type.

PRIME is a process by which a Member³ may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest.⁴ A Member (the “Initiating Member”) may initiate an Auction provided all of the following are met: (i) The Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO⁵ or the Agency Order’s limit price (if the order is a limit order); and (iii) with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01, the System⁶ will reject the Agency Order.⁷

An Intermarket Sweep Order (“ISO”) is defined in Exchange Rule 1400(i) as a limit order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid,⁸ in the case of a limit order to sell, or any Protected Offer,⁹ in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO. A Member may submit an Intermarket Sweep Order to the Exchange only if it has simultaneously

routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the Intermarket Sweep Order. An ISO may be either an Immediate-Or-Cancel Order¹⁰ or an order that expires on the day it is entered.¹¹

The Exchange now proposes to implement an ISO PRIME order type (“ISO PRIME”) that will allow the submission of an ISO into the PRIME. Specifically, an ISO PRIME is the transmission of two orders for crossing pursuant to Rule 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, without regard for better priced Protected Bids or Protected Offers because the Member transmitting the ISO PRIME order to the Exchange has, simultaneously with the submission of the ISO PRIME order, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRIME Auction price, and has swept all interest in the Exchange’s Book¹² priced better than the proposed Auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PRIME order, meaning that any executions will be given to the agency side of the order.

The Exchange will accept an ISO PRIME provided that the order adheres to the current PRIME order acceptance criteria outlined above, except that the initiating Member is only required to stop the entire Agency Order as principal or with a solicited order at the Agency Order’s limit price (if the order is a limit order). Therefore, a Member (the “Initiating Member”) may initiate an Auction provided that: (i) The Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; and (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the Agency Order’s limit price (if the order is a limit order). Also, with

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Exchange Rule 515A(a).

⁵ The term “NBBO” means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

⁶ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁷ See Exchange Rule 515A(a)(1).

⁸ A “Protected Bid” or “Protected Offer” means a Bid or Offer in an options series, respectively, that: (a) Is disseminated pursuant to the OPRA Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. See Exchange Rule 1400(p).

⁹ *Id.*

¹⁰ An immediate-or-cancel order is an order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. An immediate-or-cancel order is not valid during the opening rotation process described in Rule 503. See Exchange Rule 516(c).

¹¹ See Exchange Rule 1400(i).

¹² The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01, the System will reject the Agency Order.¹³

The Exchange will process the ISO PRIME order in the same manner that it currently processes PRIME Orders, except that it will initiate a PRIME Auction without protecting away prices. The Member transmitting the ISO PRIME order will bear the responsibility to clear all better priced interest away simultaneously with the submission of the ISO PRIME order to the Exchange.

The Exchange also proposes to adopt a new allocation methodology specifically for Market Maker¹⁴ interest that is executed during an ISO PRIME Auction. Currently, allocation in a PRIME Auction follows the order allocation methodology defined in Exchange Rule 515A(a)(2)(iii), which provides that Priority Customer¹⁵ orders resting on the Book before, or that are received during, the Response Time Interval¹⁶ and Priority Customer RFR¹⁷ responses shall, collectively have first priority to trade against the Agency Order. The allocation of an Agency Order against the Priority Customer orders resting in the Book, Priority Customer orders received during the Response Time Interval, and Priority Customer RFR responses shall be in the sequence in which they are received by the System.¹⁸ Market Maker priority quotes¹⁹ and RFR responses from

Market Makers with priority quotes will collectively have second priority. The allocation of Agency Orders against these contra sided quotes and RFR responses shall be on a size pro rata basis²⁰ as defined in Rule 514(c)(2).²¹ Professional Interest²² orders resting in the Book, Professional Interest orders placed in the Book during the Response Time Interval, Professional Interest quotes, and Professional Interest RFR responses will collectively have third priority. The allocation of Agency Orders against these contra sided orders and RFR Responses shall be on a size pro rata basis as defined in Rule 514(c)(2).²³

The Exchange now proposes to amend subsection (C) to adopt a new allocation for Market Maker priority quotes at the conclusion of an Auction for an ISO PRIME order. The proposed rule text will state that at the conclusion of an Auction for an ISO PRIME order, the allocation of Agency Orders at the final Auction price shall be: (i) To Market Makers that traded in the associated ISO sweep, for up to the full size of such Market Makers' refreshed priority quotes, as well as any RFR responses submitted by those Market Makers; (ii) to those Market Makers with quotes at the Auction start price that were resting and any RFR responses submitted by those Market Makers at the final Auction price; and (iii) to all other Market Makers that did not trade in the associated ISO sweep and did not have resting quotes at the Auction start price with joining interest at the final Auction price that was submitted during the

Auction. If two or more Market Makers are entitled to priority under (i), (ii) or (iii) above, priority will be afforded to the extent practicable on a pro-rata basis.

This can be demonstrated in the following examples.

Example 1—(Current PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker with priority quotes has second priority

ABBO²⁴ = \$1.15—\$1.25 100 × 100

MM3 = \$1.15—\$1.25 100 × 100

(priority quote)²⁵

MBBO = \$1.15—\$1.25 100 × 100

NBBO = \$1.15—\$1.25 200 × 200

Agency Order to buy 50 contracts with a limit price of \$1.20

Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with initiating price of \$1.20

(Auction Starts)

- @10 milliseconds MM1 response received (did not have a priority quote on the Book), AOC eQuote to Sell 10 at \$1.18
- @30 milliseconds BD4 response received, AOC order to Sell 10 at \$1.18
- @50 milliseconds Priority Customer response received, AOC order to Sell 15 at \$1.18
- @75 milliseconds MM3 response received, AOC eQuote to Sell 20 at \$1.18
- 100 milliseconds (Auction Ends)

Under this scenario the Agency Order would be executed as follows:

1. 15 contracts trade with Priority Customer @ \$1.18
2. 20 contracts trade with MM3 @ \$1.18
3. 8 contracts trade with MM1 @ \$1.18
4. 7 contracts trade with BD4 @ \$1.18 (This fills the entire Agency Order and Contra Order does not receive an execution)

Example 2—(Proposed ISO PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker (who initially traded as part of the associated ISO Sweep) with joining quotes at the final Auction price has second priority

²⁴ The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²⁵ The term "priority quote" has the meaning set forth in Rule 517(b)(1)(i). See Exchange Rule 100. See also *supra* note 19.

¹³ See Exchange Rule 515A(a)(1).

¹⁴ The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

¹⁵ The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

¹⁶ The "Response Time Interval" means the period of time during which responses to the RFR may be entered. The RFR timer is 100 milliseconds. See MIAx Options Regulatory Circular 2017-30, Change to MIAx Options PRIME Timer Effective June 16, 2017 (June 15, 2017) available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAx_Options_RC_2017_30.pdf.

¹⁷ When the Exchange receives a properly designated Agency Order for auction processing, a Request for Responses ("RFR") detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange's data feeds. See Exchange Rule 515A(a)(2)(i)(B).

¹⁸ See Exchange Rule 515A(a)(2)(iii)(B).

¹⁹ To be considered a priority quote, at the time of execution, each of the following standards must be met: (A) The bid/ask differential of a Market Maker's two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Exchange Rule 603(b)(4)); (B) the initial size of both or the Market Maker's bid and the offer must be in compliance with the requirements of Exchange Rule 604(b)(2); (C) the bid/ask differential of a Market

Maker's two-sided quote pair must meet the priority quote width requirements defined in Exchange Rule 517(b)(1)(ii) for each option; and (D) either of the following are true: 1. At the time a locking or crossing quote or order enters the System, the Market Maker's two-sided quote pair must be valid width for that option and must have been resting on the Book; or 2. Immediately prior to the time the Market Maker enters a new quote that locks or crosses the MBBO, the Market Maker must have had a valid width quote already existing (*i.e.*, exclusive of the Market Maker's new marketable quote or update) among his two-sided quotes for that option. See Exchange Rule 517(b). The term "MBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

²⁰ Exchange Rule 514(c)(2), Pro Rata Allocation, states that, under this method, resting quotes and orders on the Book are prioritized according to price and time. If there are two or more quotes or orders at the best price then the contracts are allocated proportionally according to size (in a pro-rata fashion). If the executed quantity cannot be evenly allocated, the remaining contracts will be distributed one at a time based upon price-size-time priority.

²¹ See Exchange Rule 515A(a)(2)(iii)(C).

²² The term "Professional Interest" means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. See Exchange Rule 100.

²³ See Exchange Rule 515A(a)(2)(iii)(D).

ABBO = \$1.15—\$1.17 200 × 200
 MM3 = \$1.15—\$1.17 100 × 10 (priority quote)
 MBBO = \$1.15—\$1.17 100 × 10
 NBBO = \$1.15—\$1.17 300 × 210
 ISO PRIME Agency Order to buy 50 contracts with a limit price of \$1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of \$1.20.

Under this scenario the Agency Order would be executed as follows:

1. 10 contracts trade with MM3 @1.17
 Contemporaneously the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of \$1.20
 Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with initiating price of \$1.20
 (Auction Starts)

- @10 milliseconds MM1 response received, AOC eQuote to Sell 10 at \$1.18
- @30 milliseconds BD4 response received, AOC order to Sell 10 at \$1.18
- @40 milliseconds Priority Customer response received, AOC order to Sell 15 at \$1.18
- @65 milliseconds MM3 (who traded as part of the initial sweep), response received, AOC eQuote to Sell 40 at \$1.18
- 100 milliseconds (Auction Ends)

Under this scenario the Agency Order would be executed as follows:

2. 15 contracts trade with Priority Customer @\$1.18
 3. 25 contracts trade with MM3 @\$1.18 (This fills the entire Agency Order and Contra Order does not receive an execution)

Example 3—(Proposed ISO PRIME Allocation) Single Price Submission, Market Maker who has a joining quote at a better price has priority and Market Maker (who has a resting quote at the Auction start price) that submits an RFR response at the final Auction price has priority

ABBO = \$1.15—\$1.17 100 × 100
 MM1 = \$1.15—\$1.17 10 × 10 (priority quote)
 MM2 = \$1.15—\$1.20 20 × 20 (priority quote)
 MM3 = \$1.15—\$1.21 20 × 20 (priority quote)

MBBO = \$1.15—\$1.17 50 × 10
 NBBO = \$1.15—\$1.17 150 × 110

ISO PRIME Agency Order to buy 50 contracts with a limit price of \$1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of \$1.20.

Under this scenario the Agency Order would be executed as follows:

1. 10 contracts trade with MM1 @ \$1.17
 Contemporaneously the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of \$1.20
 Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with initiating price of \$1.20
 (Auction Starts)

- @10 milliseconds MM4 response received, AOC eQuote to Sell 30 at \$1.18
- @30 milliseconds MM3 response received, AOC eQuote to Sell 20 at \$1.19
- @75 milliseconds MM2 (who has a resting quote at the Auction Start Price), response received, AOC eQuote to Sell 20 at \$1.19
- 100 milliseconds (Auction Ends)

Under this scenario, the Agency Order would be executed as follows:

2. 30 contracts trade with MM4 @ \$1.18
 3. 10 contracts trade with MM2 @ \$1.19 (This is the final Auction price and fills the entire Agency Order and Contra Order and MM3 does not receive an execution)

Example 4—(Proposed ISO PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker (who initially traded as part of an ISO Sweep) with joining quotes has second priority, Market Maker with joining interest that is received during the associated ISO PRIME Auction that did not trade in the associated ISO sweep and did not have resting interest at the Auction start price receives last priority among Market Makers

ABBO = \$1.15—\$1.17 200 × 200
 MM3 = \$1.15—\$1.17 100 × 10 (priority quote)

MBBO = \$1.15—\$1.17 100 × 10
 NBBO = \$1.15—\$1.17 300 × 210

ISO PRIME Agency Order to buy 50 contracts with a limit price of \$1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of \$1.20.

Under this scenario, the Agency Order would be executed as follows:

1. 10 contracts trade with MM3 @1.17
 Contemporaneously, the balance of the ISO PRIME Agency Order initiates

a PRIME Auction to buy 40 contracts with a limit price of \$1.20
 Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with an initiating price of \$1.20

(Auction Starts)

(Auction Starts)

- @10 milliseconds MM1 response received (did not have a priority quote on the Book), AOC eQuote to Sell 20 at \$1.18
- @30 milliseconds BD4 response received, AOC order to Sell 20 at \$1.18
- @40 milliseconds Priority Customer response received, AOC order to Sell 15 at \$1.18
- @65 milliseconds MM3 (who traded as part of the initial sweep), quote response received, AOC eQuote to Sell 20 at \$1.18
- @100 milliseconds (Auction Ends)

Under this scenario, the Agency Order would be executed as follows:

2. 15 contracts trade with Priority Customer @\$1.18
 3. 20 contracts trade with MM3 @ \$1.18
 4. 3 contracts trade with MM1 @\$1.18
 5. 2 contracts trade with BD4 @\$1.18 (This fills the entire Agency Order and the Contra Order does not receive an execution)

The Exchange believes this allocation methodology, used only for Market Maker priority interest and only at the conclusion of an ISO PRIME Auction, will provide an additional incentive for Market Makers to provide their most aggressive quotes to the market throughout the entire trading session.

The Exchange also proposes to amend subsection (j) which currently states, notwithstanding (a)(2)(iii)(C), (D) above, if the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority and the Initiating Member's priority (40%) have been satisfied. The new proposed rule text will provide, notwithstanding (a)(2)(iii)(C), (D) above, (provided the Auction is not for an ISO PRIME order) if the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority and the

Initiating Member may not participate on any such balance unless the Agency Order would otherwise go unfilled.

The Exchange will announce the implementation of this order type in a Regulatory Circular. The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market in that it promotes competition as described below. Specifically, the proposal allows the Exchange to offer its Members an order type that is already offered by another exchange.²⁸ In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PRIME. ISO PRIME orders will also be subject to all eligibility requirements that currently apply to PRIME orders. The Initiating Member, simultaneous with the routing of the ISO PRIME order to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRIME Auction price and has swept all interest in the Exchange's Book priced better than the proposed Auction starting price. Finally, the proposal does not unfairly discriminate among Members because all Members of the Exchange are eligible to submit an ISO PRIME order.

The Exchange's proposal to adopt a new allocation at the conclusion of an

ISO PRIME Auction for Market Maker priority quotes and RFR responses from Market Makers with priority quotes, that participate in the associated ISO sweep, promotes just and equitable principles of trade, perfects the mechanisms of a free and open market and a national market system and, in general, benefits investors as it provides an additional incentive to Market Makers to provide their most aggressive quotes to the market at all times. Prioritizing Market Maker interest such that Market Makers that trade in the associated ISO sweep that also have joining interest at the final Auction price receive first priority in allocation provides an incentive to Market Makers to have their most aggressive quotes on the Book in order to participate in any potential ISO sweeps.

The Exchange's proposal does not change the existing allocation priority for PRIME Auctions. The Exchange's proposal is narrowly tailored to allocation priority only among Market Makers and only at the conclusion of a PRIME Auction initiated by an ISO PRIME order.

The Exchange currently uses priority quotes for trade allocation purposes as described in Exchange Rule 517(b) which provides that, quotes will be considered either priority quotes (*i.e.*, trade allocation will be in accordance with Rule 514(e), which provides priority quotes with precedence over all Professional Interest) or non-priority quotes (*i.e.*, trade allocation will be in accordance with Rule 514(e), which also provides non-priority quotes are considered together with all other Professional Interest) based upon a Market Maker's quote width at certain times as described.²⁹ To be considered a priority quote, at the time of execution, each of the following standards must be met: (A) The bid/ask differential of both of the Market Maker's two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Rule 603(b)(4)); (B) the initial size of both of the Market Maker's bid and the offer must be in compliance with the requirements of Rule 604(b)(2); (C) the bid/ask differential of a Market Maker's two-sided quote pair must meet the priority quote width requirements defined in Exchange Rule 517(b)(ii) for each option; and (D) either of the following are true: 1. At the time a locking or crossing quote or order enters the System, the Market Maker's two-sided pair must be valid width for that option and must have been resting on the Book; or 2. Immediately prior to the time the

Market Maker enters a new quote that locks or crosses the MBBO, the Market Maker must have had a valid width quote already existing (*i.e.*, exclusive of the Market Maker's new marketable quote or update) among his two-side quotes for that option.³⁰

Exchange Rule 514(e) provides that after executions resulting from Priority Overlays set forth in paragraph (d) of Rule 514, when the pro-rata allocation method applies: (1) If there is other interest at the NBBO, after all Priority Customer Orders (if any) at that price have been filled, executions at that price will be first allocated to other remaining Market Maker priority quotes, which have not received a participation entitlement, and have precedence over Professional Interest. (2) If after all Market Maker priority quotes have been filled in accordance with (1) above and there remains interest at the NBBO, executions will be allocated to all Professional Interest at that price. Professional Interest is defined in Rule 100 and includes among other interest, Market Maker non-priority quotes (as described in Rule 517(b)(1)(iii)) and Market Maker orders in both assigned and non-assigned classes.³¹

The Exchange does not believe that the purpose of the proposed rule change, to provide priority to a Market Maker at the conclusion of an ISO PRIME Auction (among other Market Makers) that has also traded in the associated ISO sweep, is a new or novel concept, as the Exchange has an existing hierarchy of priority allocation based on priority quotes as discussed above.

Additionally, the Exchange believes its proposal to amend subsection (J) to clarify that the subsection does not apply to Auctions for ISO PRIME orders, promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by removing any ambiguity in the Exchange's rulebook about the type of Auctions subsection (J) pertains to. Current subsection (J) provides additional clarifying language concerning the priority of allocations at the conclusion of a PRIME Auction that does not result in price improvement over the Exchange's disseminated price at the time the Auction began stating that, "resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority" The

³⁰ See Exchange Rule 517(b)(1)(i).

³¹ See Exchange Rule 514(e).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ See Nasdaq ISE Exchange Rule, Options 3, Section 13, Supplementary Material .08.

²⁹ See Exchange Rule 517(b).

Exchange's proposal concerning allocation at the conclusion of an Auction for an ISO PRIME order provides a more nuanced and detailed hierarchy of allocation for Market Makers which would be applicable in the scenario contemplated by subsection (J). Therefore, the Exchange is proposing to exclude the application of subsection (J) to Auctions that are initiated by ISO PRIME orders. The Exchange believes this change eliminates any potential conflict regarding the application of the Exchange's rules and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes this change will benefit market participants as it encourages Market Makers to participate in ISO PRIME Auctions and will provide additional incentive to Market Makers to provide their most aggressive quotes to the market throughout the trading session and may also result in increased liquidity being available during the Auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will benefit inter-market competition as it will allow the Exchange to compete with other markets that already allow an ISO order type in their price improvement mechanisms.³²

The Exchange's proposal to adopt an ISO PRIME order type benefits intra-market competition because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PRIME. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Exchange Members, and all Exchange Members may submit an ISO PRIME order.

The Exchange does not believe its proposal to further apportion Market Maker allocation at the conclusion of an Auction of an ISO PRIME order will impose any burden on intra-market competition but rather promotes intra-market competition as it provides further incentive to Market Makers to provide their most aggressive quotes to the market throughout the entire trading session and may increase liquidity available during a PRIME Auction. The proposal provides Market Makers with

priority quotes on the Book, that participate in an associated ISO sweep, with priority over other Market Makers, which benefits intra-market competition as it also provides an incentive to Market Makers to provide their most aggressive quotes to the market during the entire trading session to be in position to participate in any potential ISO sweeps.

The Exchange does not believe its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, but rather will promote inter-market competition as it provides an additional incentive to Market Makers on the Exchange to provide their most aggressive quotes to the market at all times which could result in tighter quotes and greater liquidity being available in the market place, which would benefit all investors.

The Exchange believes its proposal to amend subparagraph (J) promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed rule change provides additional detail and further clarifies the rule. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act³³ and Rule 19b-4(f)(6)³⁴ thereunder.

At any time within 60 days of the filing of the proposed rule change, the

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2020-31 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-MIAX-2020-31. 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

³² See *supra* note 28.

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2020-31 and should be submitted on or before October 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-21554 Filed 9-29-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34026; File No. 812-15145]

Arca U.S. Treasury Fund and Arca Capital Management, LLC

September 24, 2020.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order under sections 6(c) and 23(c)(3) of the Investment Company Act of 1940 (the “Act”) for an exemption from rule 23c-3 under the Act.

Summary of Application: Applicants request an order under sections 6(c) and 23(c)(3) of the Act for an exemption from certain provisions of rule 23c-3 to permit certain registered closed-end investment companies to make repurchase offers on a monthly basis.

Applicants: Arca U.S. Treasury Fund (the “Fund”) and Arca Capital Management, LLC (the “Adviser”).

Filing Dates: The application was filed on July 22, 2020 and amended on September 10, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at *Secretaries-Office@sec.gov* and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 19, 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 *Secretaries-Office@sec.gov*.

ADDRESSES: The Commission: *Secretaries-Office@sec.gov*. Applicants: c/o Kelley A. Howes, by email to *KHowes@mofo.com*.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Kaitlin C. Bottock, 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.

Applicants’ Representations

1. The Fund is a Delaware statutory trust that is registered under the Act as a diversified, closed-end management investment company that operates as an interval fund. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Fund.

2. Applicants request that any relief granted also apply to any registered closed-end management investment company that operates as an interval fund pursuant to rule 23c-3 for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,¹ acts as investment adviser (the “Future Funds,” and together with the Fund, the “Funds,” and each, individually, a “Fund”).²

3. The Fund’s common shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Fund issues its shares as digital securities (“ArCoins”), meaning the securities are uncertificated securities, the ownership and transfer of which are authenticated and recorded as ERC-1404 compatible tokens on Ethereum, an electronic distributed ledger that is secured using

¹ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² All entities currently intending to rely on the requested relief have been named as applicants. Any entity that relies on the requested order in the future will do so only in accordance with the terms and conditions of the application.

cryptography (referred to as a “blockchain”).

4. Applicants request an order to permit each Fund to offer to repurchase a portion of its common shares at one-month intervals, rather than the three, six, or twelve-month intervals specified by rule 23c-3.

5. Each Fund will disclose in its prospectus and annual reports its fundamental policy to make monthly offers to repurchase a portion of its common shares at net asset value, less deduction of a repurchase fee, if any, as permitted by rule 23c-3(b)(1). The fundamental policy will be changeable only by a majority vote of the holders of such Fund’s outstanding voting securities. Under the fundamental policy, the repurchase offer amount will be determined by the board of trustees of the applicable Fund (“Board”) prior to each repurchase offer. Each Fund will comply with rule 23c-3(b)(8)’s requirements with respect to its trustees who are not interested persons of such Fund, within the meaning of section 2(a)(19) of the Act (“Disinterested Trustees”) and their legal counsel. Each Fund will make monthly offers to repurchase not less than 5% of its outstanding shares at the time of the repurchase request deadline. The repurchase offer amounts for the then-current monthly period, plus the repurchase offer amounts for the two monthly periods immediately preceding the then-current monthly period, will not exceed 25% of the outstanding common shares of the applicable Fund.

6. Each Fund’s fundamental policies will specify the means to determine the repurchase request deadline and the maximum number of days between each repurchase request deadline and the repurchase pricing date. Each Fund’s repurchase pricing date normally will be the same date as the repurchase request deadline and pricing will be determined after close of business on that date.

7. Pursuant to rule 23c-3(b)(1), each Fund will repurchase shares for cash on or before the repurchase payment deadline, which will be no later than seven calendar days after the repurchase pricing date. Each Fund intends to make payment by the fifth business day or seventh calendar day (whichever period is shorter) following the repurchase pricing date. Each Fund will make payment for shares repurchased in the previous month’s repurchase offer at least five business days before sending notification of the next repurchase offer. Each Fund may deduct a repurchase fee in an amount not to exceed 2% from the repurchase proceeds payable to

³⁵ 17 CFR 200.30-3(a)(12).

tendering shareholders, in compliance with rule 23c-3(b)(1).

8. Each Fund will provide common shareholders with notification of each repurchase offer no less than seven days and no more than fourteen days prior to the repurchase request deadline. The notification will include all information required by rule 23c-3(b)(4)(i). Each Fund will file the notification and the Form N-23c-3 with the Commission within three business days after sending the notification to its respective common shareholders.

9. Each Fund will not suspend or postpone a repurchase offer except pursuant to the vote of a majority of its trustees, including a majority of its Disinterested Trustees, and only under the limited circumstances specified in rule 23c-3(b)(3)(i). Each Fund will not condition a repurchase offer upon tender of any minimum amount of shares. In addition, each Fund will comply with the pro ration and other allocation requirements of rule 23c-3(b)(5) if common shareholders tender more than the repurchase offer amount. Further, each Fund will permit tenders to be withdrawn or modified at any time until the repurchase request deadline, but will not permit tenders to be withdrawn or modified thereafter.

10. From the time a Fund sends its notification to shareholders of the repurchase offer until the repurchase pricing date, a percentage of such Fund's assets equal to at least 100% of the repurchase offer amount will consist of: (a) Assets that can be sold or disposed of in the ordinary course of business at approximately the price at which such Fund has valued such investment within a period equal to the period between the repurchase request deadline and the repurchase payment deadline; or (b) assets that mature by the next repurchase payment deadline. In the event the assets of a Fund fail to comply with this requirement, the Board will cause such Fund to take such action as it deems appropriate to ensure compliance.

11. In compliance with the asset coverage requirements of section 18 of the Act, any senior security issued by, or other indebtedness of, a Fund will either mature by the next repurchase pricing date or provide for such Fund's ability to call, repay or redeem such senior security or other indebtedness by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit that Fund to complete the repurchase offer in such amounts determined by its Board.

12. The Board of each Fund will adopt written procedures to ensure that

such Fund's portfolio assets are sufficiently liquid so that it can comply with its fundamental policy on repurchases and the liquidity requirements of rule 23c-3(b)(10)(i). The Board of each Fund will review the overall composition of the portfolio and make and approve such changes to the procedures as it deems necessary.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 23(c) of the Act provides in relevant part that no registered closed-end investment company shall purchase any securities of any class of which it is the issuer except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

3. Rule 23c-3 under the Act permits a registered closed-end investment company to make repurchase offers for its common stock at net asset value at periodic intervals pursuant to a fundamental policy of the investment company. "Periodic interval" is defined in rule 23c-3(a)(1) as an interval of three, six, or twelve months. Rule 23c-3(b)(4) requires that notification of each repurchase offer be sent to shareholders no less than 21 calendar days and no more than 42 calendar days before the repurchase request deadline.

4. Applicants request an order pursuant to sections 6(c) and 23(c) of the Act exempting them from rule 23c-3(a)(1) to the extent necessary to permit the Funds to make monthly repurchase offers. Applicants also request an exemption from the notice provisions of rule 23c-3(b)(4) to the extent necessary to permit each Fund to send notification of an upcoming repurchase offer to shareholders at least seven days but no more than fourteen calendar days in advance of the repurchase request deadline.

5. Applicants contend that monthly repurchase offers are in the public interest and in the common shareholders' interests and consistent with the policies underlying rule 23c-

3. Applicants assert that monthly repurchase offers will provide investors with more liquidity than quarterly repurchase offers. Applicants assert that shareholders will be better able to manage their investments and plan transactions, because if they decide to forego a repurchase offer, they will only need to wait one month for the next offer. Applicants also contend that the portfolio of each Fund will be managed to provide ample liquidity for monthly repurchase offers.

6. Applicants propose to send notification to shareholders at least seven days, but no more than fourteen calendar days, in advance of a repurchase request deadline. Applicants assert that, because each Fund intends to make payment on the fifth business day or seventh calendar day (whichever period is shorter) following the repurchase pricing date, the entire procedure will be completed before the next notification is sent out to shareholders, thus avoiding any overlap. Applicants believe that these procedures will eliminate any possibility of investor confusion. Applicants also state that monthly repurchase offers will be a fundamental feature of the Funds, and their prospectuses will provide a clear explanation of the repurchase program.

7. Applicants submit that for the reasons given above the requested relief is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Fund (and any Future Fund relying on this relief) will make a repurchase offer pursuant to rule 23c-3(b) for a repurchase offer amount of not less than 5% in any one-month period. In addition, the repurchase offer amount for the then-current monthly period, plus the repurchase offer amounts for the two monthly periods immediately preceding the then-current monthly period, will not exceed 25% of the Fund's (or Future Fund's, as applicable) outstanding common shares. The Fund (and any Future Fund relying on this relief) may repurchase additional tendered common shares pursuant to rule 23c-3(b)(5) only to the extent the percentage of additional common shares so repurchased does not exceed 2% in any three-month period.

2. Payment for repurchased common shares will occur at least five business days before notification of the next

repurchase offer is sent to common shareholders of the Fund (or any Future Fund relying on this relief).

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-21605 Filed 9-29-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34025; File No. 812-15163]

Deutsche Bank AG, et al.

September 24, 2020.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

SUMMARY: Applicants have received a temporary order (“Temporary Order”) exempting them from section 9(a) of the Act, with respect to an injunction entered against Deutsche Bank AG on June 17, 2020 by the U.S. District Court for the Southern District of New York (“District Court”), in connection with a consent order between Deutsche Bank AG and the U.S. Commodity Futures Trading Commission (“CFTC”), until the Commission takes final action on an application for a permanent order (the “Permanent Order,” and with the Temporary Order, the “Orders”). Applicants also have applied for a Permanent Order.

Applicants: Deutsche Bank AG; DWS Investment Management Americas, Inc. (“DIMA”), DWS International GmbH (“DWSI”), DWS Investments Australia Limited (“DIAL”), RREEF America L.L.C. (“RREEF”), DWS Alternatives Global Limited (“DAAM Global”), DBX Advisors LLC (“DBX Advisors”), DWS Distributors, Inc. (“DDI”), Harvest Global Investments Limited (“Harvest”) and DWS Investments Hong Kong Limited (“DIHK”) (each a “Fund Servicing Applicant,” and together with Deutsche Bank AG, the “Applicants”).

Filing Date: The application was filed on September 24, 2020, and amended on September 24, 2020.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary *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 19, 2020 and should be accompanied by proof of service on 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: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov*; Applicants: Caroline Pearson, DWS Investment Management Americas, Inc., *Regulatory.notices@dws.com*.

FOR FURTHER INFORMATION CONTACT: Adam Bolter, Senior Counsel at (202) 551-6011 or David Nicolardi, Branch Chief at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants’ Representations

1. Deutsche Bank AG, a stock corporation organized under the laws of Germany, controls DWS Group GmbH & Co. KGaA (“DWS Group”). The Fund Servicing Applicants collectively serve as investment adviser (as defined in section 2(a)(20) of the Act to 130 management investment companies registered under the Act or series thereof (“Funds”) and as principal underwriter (as defined in section 2(a)(29) of the Act) to 74 open-end registered investment companies under the Act (“Open-End Funds”). Each of the Fund Servicing Applicants listed below (other than Harvest) is a wholly owned subsidiary of DWS Group. Following its initial public offering in March 2018, DWS Group became a public company, listed and traded on the Frankfurt Stock Exchange, that is as of June 30, 2020 a 79.49% owned subsidiary of Deutsche Bank AG.

2. DIMA, a corporation organized under the laws of Delaware, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Investment Advisers Act of 1940, as

amended (the “Advisers Act”). DIMA provides investment advisory and management services to the Funds listed on Part 1-A of Annex A of the application, and investment sub-advisory services to the Funds listed on Part 1-B of Annex A of the application.

3. DWSI, a limited liability company organized under the laws of Germany, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Advisers Act. DWSI provides investment advisory services to the Funds listed on Part 2-A of Annex A of the application, and investment sub-advisory services to the Funds listed on Part 2-B of Annex A of the application.

4. DIAL, a corporation organized under the laws of Australia, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Advisers Act. DIAL provides investment sub-advisory services to the Fund listed on Part 3-A of Annex A of the application, investment sub-sub-advisory services to the Funds listed on Part 3-B of Annex A of the application, and investment sub-sub-sub-advisory services to the Fund listed on Part 3-C of Annex A of the application.

5. RREEF, a Delaware limited liability company, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Advisers Act. RREEF provides investment sub-advisory services to the Funds listed on Part 4-A of Annex A of the application, and investment sub-sub-advisory services to the Funds listed on Part 4-B of Annex A of the application.

6. DAAM Global, a UK limited company, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Advisers Act. DAAM Global provides investment sub-advisory services to the Fund listed on Part 5-A of Annex A of the application, investment sub-sub-advisory services to the Funds listed on Part 5-B of Annex A of the application, and investment sub-sub-sub-advisory services to the Fund listed on Part 5-C of Annex A of the application.

7. DBX Advisors, a Delaware limited liability company, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Advisers Act. DBX Advisors provides investment advisory services to the Funds listed on Part 6 of Annex A of the application.

8. DDI, a corporation organized under the laws of Delaware, is a wholly owned subsidiary of DIMA and is a broker-dealer registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). DDI serves as principal underwriter (“Underwriter”)

for the Open-End Funds listed on Part 7 of Annex A of the application.

9. Harvest, a Hong Kong limited company by shares, is the wholly owned subsidiary of a joint venture of which Deutsche Bank AG is an affiliated person (within the meaning of section 2(a)(3) of the Act) (“Affiliated Person”) due to its indirect minority ownership interest through a DWS Group subsidiary. Harvest is an investment adviser registered under the Advisers Act and provides investment advisory services to the Funds listed on Part 8–A of Annex A of the application and investment sub-advisory services to the Funds listed on Part 8–B of Annex A of the application.

10. DIHK, a Hong Kong limited company by shares, is a wholly owned subsidiary of DWS Group and is an investment adviser registered under the Advisers Act. DIHK provides investment sub-advisory services to the Funds listed on Part 9 of Annex A of the application.¹

11. Other than the Fund Servicing Applicants, neither Deutsche Bank AG nor any existing company of which Deutsche Bank AG is an Affiliated Person currently serves as an investment adviser (as defined in section 2(a)(20) of the Act), including sub-adviser, or depositor of any registered investment company, employees’ securities company or investment company that has elected to be treated as a business development company under the Act, or as principal underwriter (as defined in section 2(a)(29) of the Act) for any open-end registered investment company, registered unit investment trust (“UIT”) or registered face amount certificate company (“FACC”) (such activities, the “Fund Servicing Activities”).² Applicants request that any relief granted by the Commission pursuant to the application also apply to any existing company of which Deutsche Bank AG is an Affiliated Person and to any other company of which Deutsche Bank AG may become an Affiliated Person in the future (together with the Fund Servicing Applicants, the “Covered Persons”) with respect to any activity contemplated by section 9(a) of the Act.³

¹ DIMA, DWSI, DIAL, RREEF, DAAM Global, DBX Advisors, Harvest and DIHK collectively are the “Adviser Applicants.”

² None of Applicants currently acts as investment adviser, depositor or principal underwriter to investment companies that have elected to be treated as business development companies under the Act, registered unit investment trusts or registered face-amount certificate companies.

³ Applicants and other Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the

12. On August 18, 2016, the CFTC filed a complaint (the “Complaint”) against Deutsche Bank AG in the U.S. District Court for the Southern District of New York (“District Court”) in a civil injunctive action captioned *U.S. Commodity Futures Trading Commission v. Deutsche Bank AG*. The Complaint sought injunctive and other equitable relief, as well as the imposition of civil monetary penalties, alleging (1) violations of a prior CFTC Order (“CFTC Order”); and (2) new violations of the Commodity Exchange Act (the “CEA”), 7 U.S.C. 1–26 (2012), and the CFTC’s Regulations (“Regulations”) promulgated thereunder, 17 CFR pts. 1–190 (2016), relating to the firm’s unintentional failure to meet its responsibilities regarding swap data reporting and its business continuity and disaster recovery plan, and a corresponding failure to diligently supervise activities relating to its swap reporting responsibilities (the “Conduct”).

The Complaint was filed following an inadvertent, five-day outage of Deutsche Bank AG’s swap reporting platform in April 2016. During the outage, Deutsche Bank AG was unable to submit any price or transaction data to the data repository. At the time of the outage, Deutsche Bank AG was subject to a CFTC Order which had resolved an investigation into a prior swap reporting error and required Deutsche Bank AG to remediate its swap data reporting program. In connection with these remedial undertakings, Deutsche Bank AG attempted to perform a maintenance upgrade to its swap reporting platform. During this process, outdated or unsynchronized data files were inadvertently copied to the main platform, resulting in the outage.

13. When the Complaint was filed, the CFTC simultaneously sought—and Deutsche Bank AG then consented to—the District Court’s appointment of an independent monitor (“Monitor”) to facilitate the firm’s compliance with its reporting responsibilities under the CFTC Order, the Act and the Regulations. On October 20, 2016, the District Court issued a Consent Order of Preliminary Injunction and Other Equitable Relief against Deutsche Bank AG⁴ by which the District Court appointed the Monitor.

14. The Monitorship concluded on May 20, 2019 and the Monitor submitted his final report on August 3,

Act subject to the applicable terms and conditions of the Orders.

⁴ Although the title of the October 20, 2016 order includes a preliminary injunction, that order does not enjoin any activity and therefore was not disqualifying under section 9(a) of the Act.

2019. As of that date, the Monitor concluded that Deutsche Bank AG had addressed the Monitor’s recommendations.

15. On June 17, 2020, the District Court (i) ordered Deutsche Bank AG to comply with the CFTC Order and (ii) instituted an injunction permanently enjoining Deutsche Bank AG from violating, among other provisions, section 2(a)(13)(F) and (G) of the Act, 7 U.S.C. 2(a)(13)(F), (G) (2018) (for failing to comply with the swap data reporting requirements) (the “Injunction”) (together, with the Injunction, the “Consent Order”). The Consent Order also requires Deutsche Bank AG to pay a civil monetary penalty in the amount of \$9,000,000.

16. Applicants represent that escrow accounts have been established with a third party financial institution (“Escrow Agent”) into which amounts equal to the advisory (including sub-advisory, sub-sub-advisory and sub-sub-sub-advisory) fees paid, by the Funds (or in the case of sub-advisory, sub-sub-advisory and sub-sub-sub advisory fees, by the adviser or sub-adviser of the respective Funds) to the Adviser Applicants have been and will continue to be deposited for the period from June 17, 2020 through the date upon which the Commission grants the Temporary Order.

Applicants’ Legal Analysis

1. Section 9(a)(2) of the Act provides, in pertinent part, that a person may not serve or act as, among other things, an investment adviser or depositor of any registered investment company or as principal underwriter for any registered open-end investment company, UIT, or FACC, if such person “. . . by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.” Section 9(a)(3) of the Act makes the prohibitions of section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified

under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. The Injunction results in a disqualification of Deutsche Bank AG from acting in the capacities specified in section 9(a)(2) because Deutsche Bank AG is permanently enjoined by the District Court from engaging in or continuing certain conduct and/or practices in connection with the offer or sale of any security. The Injunction also results in the disqualification of the Fund Servicing Applicants under section 9(a)(3) because each of the Fund Servicing Applicants may be considered to be an Affiliated Person. Other Covered Persons similarly would be disqualified pursuant to section 9(a)(3) were they to act in any of the capacities listed in section 9(a).

2. Section 9(c) of the Act provides that, upon application, the Commission shall by order grant an exemption from the disqualification provisions of section 9(a) of the Act, either unconditionally or on an appropriate temporary or other conditional basis, to any person if that person establishes that: (1) The prohibitions of section 9(a), as applied to the person, are unduly or disproportionately severe; or (2) the conduct of the person has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that: (i) The scope of the misconduct was limited and did not involve any of the Fund Servicing Applicants performing Fund Servicing Activities, or any Fund for which the Fund Servicing Applicants engaged in Fund Servicing Activities or their respective assets; (ii) application of the statutory bar would potentially result in material economic losses, and the operations of the Funds would be disrupted as they sought to engage new underwriters, advisers and/or sub-advisers, as the case may be; (iii) the prohibitions of section 9(a), if applied to the Fund Servicing Applicants and other Covered Persons, would be unduly or disproportionately severe; and (iv) the Conduct did not constitute conduct that would make it against the public interest or protection

of investors to grant the exemption from section 9(a).

4. Applicants assert that the Conduct giving rise to the Injunction did not involve the performance of Fund Servicing Activities and the personnel of the Fund Servicing Applicants involved in Fund Service Activities did not have any involvement in the Conduct. Accordingly, Applicants assert that it would be unduly and disproportionately severe to allow section 9(a) to disqualify Covered Persons from providing Fund Servicing Activities.

5. Applicants maintain that neither the protection of investors nor the public interest would be served by permitting the section 9(a) disqualifications to apply to the Fund Servicing Applicants because those disqualifications would deprive the Funds of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that the prohibitions of section 9(a) could operate to the financial detriment of the Funds and their shareholders, which would be an unduly and disproportionately severe consequence given that no Fund Servicing Applicants were involved in the Conduct and that the Conduct did not involve the Funds or Fund Servicing Activities. Applicants further assert that the inability of the Fund Servicing Applicants to continue providing investment advisory and underwriting services to Funds would result in the Funds and their shareholders facing other potential hardships, as described in the application.

6. Applicants assert that if the Fund Servicing Applicants were barred under section 9(a) from providing investment advisory and underwriting services to the Funds and were unable to obtain the requested exemption, the effect on their businesses and employees would be severe. Applicants represent that the Fund Servicing Applicants have committed substantial capital and resources to establishing expertise in advising and sub-advising Funds and in support of their principal underwriting business. Prohibiting them from providing Fund Servicing Activities would not only adversely affect each Fund Servicing Applicant’s business, but would also adversely affect their employees that are involved in these activities.

7. Applicants state that the Conduct centered on Deutsche Bank AG’s swaps reporting system and the supervision thereof, and did not involve (and was not alleged by the CFTC to involve) any

intentional wrongdoing on the part of the firm or its personnel. Applicants state that (i) none of the Fund Servicing Applicants’ current or former directors, officers or employees had any involvement in the Conduct; (ii) the personnel who were involved in the Conduct (or who may be subsequently identified by the Applicants as having been involved in the Conduct) have never had, do not currently have and will not in the future have any involvement in providing Fund Servicing Activities at a Covered Person;⁵ and (iii) because the Conduct did not involve the performance of Fund Serving Activities and the personnel of the Fund Servicing Applicants involved in Fund Servicing Activities did not have any involvement in the Conduct, shareholders of Funds that received investment advisory, depository and principal underwriting services from the Fund Servicing Applicants were not affected in any way.

8. Applicants represent that over a four-year period from 2015 to 2019, Deutsche Bank AG engaged in extensive remediation of its swap reporting systems and procedures, including, among other things, establishing an enhanced control framework, automating control processes, and enhancing its business continuity and disaster recovery capabilities for swap data reporting. Applicants represent that they have established specific governance around culture and ethical conduct. As a result of the foregoing, and additional remedial measures detailed in the application, Applicants submit that granting the exemption as requested in the application is consistent with the public interest and the protection of investors.

9. To provide further assurance that the exemptive relief being requested herein would be consistent with the public interest and the protection of the investors, Applicants represent that the relevant Fund Servicing Applicants (other than Harvest) participated in telephonic meetings of each of the Boards of the Funds for which the Fund Servicing Applicants serve as the primary investment adviser and/or principal underwriter, as indicated in Appendix A of the application, during the week of June 21, 2020. Applicants

⁵ To make these representations, internal counsel and human resources personnel confirmed that the individuals involved with the Conduct were not and are not officers, directors, or employees (and in the case of DWS, associated persons) of any Fund Servicing Applicant and had no involvement with Fund Servicing Activities. The Applicants also represent that the Funds did not at the time of the Conduct and do not enter into swap transactions with Deutsche Bank AG.

further represent that, prior to or at these meetings, written materials were provided to each Board, including those directors who are not “interested persons” of such Funds as defined in section 2(a)(19) of the Act (the “Independent Directors”) and, where relevant, their independent legal counsel as defined in rule 0–1(a)(6) under the Act. Applicants represent that the materials described the Conduct, the Consent Order, the disqualification under section 9(a) of the Act, and the process for obtaining exemptive relief under section 9(c) of the Act.⁶ With respect to the Funds for which any of the Applicants (other than Harvest) serve as the primary investment adviser or principal underwriter, as indicated in Appendix A of the application, Applicants represent that the respective Boards, including the Independent Directors of the Boards, by a unanimous vote of those present (including all of the Independent Directors of each Board) determined that the circumstances giving rise to the entry of the Consent Order do not adversely affect the capability of the relevant Applicants or (for Open-End Funds) the Underwriter to provide investment advisory or principal underwriting services to the respective Funds, or diminishes the nature, extent, quality or value of the services already provided to the respective Funds. Fund Servicing Applicants undertake to provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the U.S. federal securities laws.

10. Applicants represent that Deutsche Bank AG has undertaken a process in its centralized global litigation and regulatory group for considering potential collateral consequences associated with the settlement of matters involving regulators and law enforcement authorities. This process requires the

⁶ Applicants represent that, with respect to each of the Funds for which a Fund Servicing Applicant is not the primary investment adviser, the Fund Servicing Applicants normally communicate with the primary investment adviser rather than directly with the Board of that Fund. Applicants further represent that, with respect to the two Funds advised by Harvest, communications are normally with the administrator of the Funds for which Harvest serves as primary investment adviser rather than directly with the Board of those Funds. During the week of June 21, 2020 (or, in the case of Harvest, on June 29, 2020), the relevant Fund Servicing Applicants provided similar written materials (as discussed above) to the primary investment advisers and administrator, as applicable. Applicants represent that none of such Funds, their primary investment advisers or the administrator of the Funds advised by Harvest has requested that the Fund Servicing Applicants cease providing sub-advisory services.

engagement of outside counsel to complete a collateral consequences analysis in advance of all anticipated settlements with regulators and law enforcement authorities, regardless of the form of resolution, to ensure that any potential disqualifications are promptly identified and proactively addressed.

11. Certain Fund Servicing Applicants, as well as certain of their affiliates, have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the application. Applicants, however, state that none of the conduct underlying the previous section 9(c) orders granted to Fund Servicing Applicants involved the provision of Fund Servicing Activities.

Applicants’ Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. As a condition to the Temporary Order, Applicants will hold in escrow with the Escrow Agent, a third party institution, amounts equal to all advisory (including sub-advisory, sub-sub-advisory and sub-sub-sub-advisory) fees paid by the Funds (or in the case of sub-advisory, sub-sub-advisory and sub-sub-sub-advisory fees, by the adviser or sub-adviser of the respective Funds), to the Adviser Applicants for the period from June 17, 2020 through the date upon which the Commission grants the Temporary Order. Amounts paid into the escrow accounts will be disbursed by the Escrow Agent to each Adviser Applicant after the Commission has acted on the application for the Permanent Order.

2. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission’s rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

3. Each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders within 60 days of the date of the Permanent Order.

4. Deutsche Bank AG will comply with the terms and conditions of the

Consent Order in all material respects. In addition, within 30 days of each anniversary of the Permanent Order (until and including the third such anniversary), Deutsche Bank AG will submit a certification signed by its chief legal officer and chief executive officer, confirming that it has complied with the terms and conditions of the Consent Order in all material respects. Such certification will be submitted to the Chief Counsel of the Commission’s Division of Investment Management with a copy to the Chief Counsel of the Commission’s Division of Enforcement.

5. The Applicants, including the Settling Firm, will provide written notification to the Chief Counsel of the Commission’s Division of Investment Management, with a copy to the Chief Counsel of the Commission’s Division of Enforcement, of any material or known violation of the terms and conditions of the Orders within 30 days of discovery of each such material or known violation. In addition, within 30 days of the first anniversary of the Permanent Order, the Applicants will submit a report, signed by the chief executive officer of Deutsche Bank AG, to the Chief Counsel of the Commission’s Division of Investment Management describing (i) the findings of the internal compliance review concerning the process for assessing collateral consequences described in section IV.F of the application and any steps taken to address areas for improvement identified in those findings and (ii) the steps that Deutsche Bank AG and the Fund Servicing Applicants have taken since the date of the Permanent Order to foster a culture of compliance, as further described in section IV.F of the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the representations and conditions in the application, until the Commission takes final action on their application for a permanent order.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-21545 Filed 9-29-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 90001/September 25, 2020/SR-
NYSE-2019-67]

Securities Exchange Act of 1934; Order Granting Petition for Review, Scheduling Filing of Statements, and Denying New York Stock Exchange LLC's Motion To Lift the Stay; In the Matter of the New York Stock Exchange LLC Regarding an Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To Modify Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

This matter comes before the Securities and Exchange Commission ("Commission") on petition to review the approval, pursuant to delegated authority, of the New York Stock Exchange LLC ("NYSE") proposed rule change to amend Chapter One of the Listed Company Manual to modify the provisions relating to direct listings.¹

On December 20, 2019, the Commission issued a notice of filing of the proposed rule change, as modified by Amendment No. 1, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")² and Rule 19b-4³ thereunder.⁴ On February 13, 2020, a longer time period was designated within which to act on the proposed rule change.⁵ On March 26, 2020, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On June 22, 2020, NYSE filed Amendment No. 2 to the proposed rule change, replacing the proposed rule change, as modified by Amendment No.

1, in its entirety. On June 24, 2020, the Commission issued a notice of filing of Amendment No. 2 to the proposed rule change.⁸ On June 24, 2020, a longer time period was designated for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.⁹ On August 26, 2020, after consideration of the record for the proposed rule change, the Division of Trading and Markets ("Division"), pursuant to delegated authority,¹⁰ approved the proposed rule change, as modified by Amendment No. 2 ("Approval Order").¹¹

On August 31, 2020, pursuant to Commission Rule of Practice 430,¹² the Council of Institutional Investors ("CII") filed with the Commission a notice of intention for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the CII filing with the Commission the notice of intention to petition for review.¹³ On September 4, 2020, NYSE filed a motion for the Commission to lift the automatic stay of the Approval Order and a brief in support of its motion to lift the stay. On September 8, 2020, CII filed a brief in opposition to NYSE's motion to lift the automatic stay. On September 8, 2020, pursuant to Commission Rule of Practice 430,¹⁴ the CII filed a petition for review of the Approval Order. On September 11, 2020, NYSE filed a reply brief in support of its motion to lift the stay.

Pursuant to Rule 431 of the Rules of Practice,¹⁵ the petition for review of the Approval Order of CII is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before October 16, 2020.

Finally, the Commission finds that it is inappropriate to lift the automatic stay during the pendency of the Commission's review.¹⁶ CII argues that the proposed rule change makes changes to the initial public offering ("IPO") market that are "so significant

that the Commission should maintain the stay" while it considers "the adequacy of investor protections" and other policy issues under the proposed rule change. We do not believe that NYSE has identified a compelling reason that lifting the automatic stay furthers the public interest, particularly in light of the policy considerations CII has identified. We do not believe it to be in the public interest to alter the status quo while the Commission considers the issues raised by the proposed rule change before it becomes effective. We accordingly deny NYSE's motion to lift the stay.

For the reasons stated above, it is hereby:

ORDERED that the petition of CII for review of the Division's action to approve the proposed rule change by delegated authority be GRANTED; and

It is further ORDERED that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before October 16, 2020.

It is further ORDERED that NYSE's Motion to Lift the Automatic Stay is hereby denied; and

It is further ORDERED that the August 26, 2020, order approving the proposed rule change, as modified by Amendment No. 2 (File No. SR-NYSE-2019-67), shall remain stayed.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-21598 Filed 9-29-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0214, SEC File No.
270-238]

Proposed Collection; Comment Request

Extension:

Rule 17a-7

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-7 (17 CFR 270.17a-7) (the "rule") under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act") is entitled "Exemption of certain purchase or sale transactions

¹ The proposed rule change relates to direct listings that also involve a primary capital raising. This matter does not affect NYSE's current rules related to direct listings that do not involve a primary capital raising.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Exchange Act Release No. 87821, 84 FR 72065 (Dec. 30, 2019). NYSE filed the proposed rule change on December 11, 2019. On December 13, 2019, NYSE filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.

⁵ See Exchange Act Release No. 88190, 85 FR 8981 (Feb. 20, 2020).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Exchange Act Release No. 88485, 85 FR 18292 (Apr. 1, 2020).

⁸ See Exchange Act Release No. 89148, 85 FR 39246 (June 30, 2020).

⁹ See Exchange Act Release No. 89147, 85 FR 39226 (June 30, 2020).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ See Exchange Act Release No. 89684, 85 FR 54454 (Sept. 1, 2020).

¹² 17 CFR 201.430.

¹³ 17 CFR 201.431(e).

¹⁴ 17 CFR 201.430.

¹⁵ 17 CFR 201.431.

¹⁶ See Exchange Act Release No. 60988 (Nov. 12, 2009) (refusing to lift automatic stay because the petitioner "raised important policy issues that warrant Commission consideration prior to allowing" rule change to go into effect).

between an investment company and certain affiliated persons thereof.” It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies (“funds”), that are affiliated persons (“first-tier affiliates”) or affiliated persons of affiliated persons (“second-tier affiliates”), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a–7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund’s board of directors to establish procedures reasonably designed to ensure that the rule’s conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.¹ The Commission’s examination staff uses these records to evaluate for compliance with the rule.

While most funds do not commonly engage in transactions covered by rule 17a–7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.² Of the approximately 2,915 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a–7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.³ The staff estimates that there are approximately 90 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these

¹ The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors’ determination that the transaction was in compliance with the procedures was made.

² Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

³ Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

policies and procedures. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 360 hours.⁴

Of the 2,915 existing funds, the staff assumes that approximately 25%, (or 729) enter into transactions affected by rule 17a–7 each year (either by the fund directly or through one of the fund’s series), and that the same percentage (25%, or 23 funds) of the estimated 90 funds that newly register each year will also enter into these transactions, for a total of 752⁵ companies that are affected by the recordkeeping requirements of rule 17a–7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all relevant transactions were made in compliance with the company’s policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.⁶ The staff estimates that the burden related to making these records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors)⁷ or 2,256 total hours each year.⁸

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a–7 is 2,616 hours.⁹ The staff also estimates that there are approximately 752 respondents and 6,016 total responses.¹⁰

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not

⁴ This estimate is based on the following calculations: (4 hours × 90 new funds = 360 hours).

⁵ This estimate is based on the following calculation: (729 + 23 = 752).

⁶ Commission staff believes that rule 17a–7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a–2 under the Act. Rule 31a–2 requires companies to preserve certain records for specified periods of time.

⁷ The staff estimates that funds that rely on rule 17a–7 annually enter into an average of 8 rule 17a–7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company’s policies and procedures.

⁸ This estimate is based on the following calculation: (3 hours × 752 companies = 2,256 hours).

⁹ This estimate is based on the following calculation: (360 hours + 2,256 hours = 2,616 total hours).

¹⁰ This estimate is based on the following calculations: 752 funds that engage in rule 17a–7 transactions × 8 transactions per year = 6,016.

derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. 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 control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission’s estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: September 24, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–21542 Filed 9–29–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 60845, September 28, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, September 30, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, September 30, 2020 at 10:00 a.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 28, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-21707 Filed 9-28-20; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0360, SEC File No. 270-317]

Proposed Collection; Comment Request¹

Extension:

Form N-17f-2

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N-17f-2 (17 CFR 274.220) under the Investment Company Act is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N-17f-2 is the cover sheet for the accountant examination certificates filed under rule 17f-2 (17 CFR 270.17f-2) by registered management investment companies ("funds") maintaining custody of securities or other investments. Form N-17f-2 facilitates the filing of the accountant's examination certificates prepared under rule 17f-2. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper Commission file number and the correct name of a fund.

Commission staff estimates that it takes: (i) on average 1.25 hours of fund accounting personnel at a total cost of 272 to prepare each Form N-17f-2;¹ and (ii) .75 hours of administrative assistant time at a total cost of \$57 to file the Form N-17f-2 with the Commission.² Approximately 201 funds currently file Form N-17f-2 with the Commission. Commission staff estimates that on average each fund files Form N-17f-2

¹ This estimate is based on the following calculation: 1.25 × \$218 (fund senior accountant's hourly rate) = \$272.

² This estimate is based on the following calculation: .75 × \$76 (administrative assistant hourly rate) = \$61.

three times annually for a total annual hourly burden per fund of approximately 6 hours at a total cost of \$1,002. The total annual hour burden for Form N-17f-2 is therefore estimated to be approximately 1,206 hours at a total cost of approximately \$201,402.³ Form N-17f-2 does not impose any paperwork related cost burdens other than this internal hour cost.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collections of information required by Form N-17f-2 is mandatory for those funds that maintain custody of their own assets. Responses will not be kept confidential. 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 control number.

The Commission requests written comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: September 24, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-21539 Filed 9-29-20; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration

³ This estimate is based on the following calculation: 201 funds × \$1,002 (total annual cost per fund) = \$201,402.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before October 30, 2020.

ADDRESSES: Comments should refer to the information collection by title and/or OMB Control Number and should be sent to: *Agency Clearance Officer*, Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205-7030, curtis.rich@sba.gov.

Copies: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Section 7(b) of the Small Business Act, 15 U.S.C. 636, as amended, authorizes the Small Business Administration to make disaster loans to businesses and nonprofit organizations, including loans for economic injury. The *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020*, Public Law 116-123 (March 6, 2020), amended the Small Business Act to make economic injury resulting from the current coronavirus pandemic (COVID-19) a disaster that is eligible for assistance under section 7(b) of the Small Business Act. The forms described below are used to collect information from eligible small businesses, including sole proprietors, independent contractors, and agricultural businesses, and also nonprofit organizations seeking financial assistance under this program.

Summary of Information Collection

Title: Economic Injury Disaster Loan Application (EIDL) COVID-19.

OMB Control Number: 3245-0406.

Respondents: Small businesses, including sole proprietors, independent contractors, and agricultural businesses, and nonprofit organizations.

Form Numbers: SBA Form 3501 through Form 3503.

(i) Form 3501, EID-COVID19 Application.

Estimated number of respondents/responses: 17,000,000.

Estimated Response time 30 minutes.

Estimated annual hour burden = 8,500,000 hours.

(ii) Form 3502—Economic Injury Disaster Loan Supporting Information.

Estimated number of respondents/responses: 17,000,000.

Estimated Response time: 1 hour.

Estimated annual hour burden: 17,000,000 hours.

(iii) Form 3503—Self-Certification for Verification of Eligible Entity for Economic Injury Disaster Loan.

Estimated number of respondents/responses: 17,000,000.

Estimated Response time: 10 minutes.

Estimated annual hour burden: 2,833,333 hours.

Curtis Rich,

Management Analyst.

[FR Doc. 2020-21571 Filed 9-29-20; 8:45 am]

BILLING CODE 8026-03-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2020-0049]

Information Collection Activities; Requests for Comments; Correction

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice; correction.

SUMMARY: The Office of Drug and Alcohol Policy and Compliance

(ODAPC), DOT, published a document in the **Federal Register** of September 3, 2020, concerning a 30-day notice and request for comments on an Information Collection Request. The document contained typographical errors.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or *bohdan.baczara@dot.gov*. When submitting comments or requesting information, please include the docket number and information collection title for reference.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 3, 2020, in FR Doc 2020-19366, on page 55066, in the first column, correct the “Supplementary Information” caption to read:

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105-0529.

Title: Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Type of Review: Clearance of a renewal of an information collection.

Form Numbers: DOT F 1385; DOT F 1380.

Respondents: The information will be used by transportation employers, Department representatives, and a variety of service agents.

Abstract: Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. This specific requirement is

elaborated in 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This request for a renewal of the information collection for the program includes 43 burden items including the U.S. Department of Transportation Alcohol Testing Form (ATF) [DOT F 1380] and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form [DOT F 1385].

The ATF includes the employee’s name, the type of test taken, the date of the test, and the name of the employer. Data on each test conducted, including test results, is necessary to document that the tests were conducted and is used to take action, when required, to ensure safety in the workplace. The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of test results for the negative, positive, and refusal tests. No employee specific data is collected. The MIS data is used by each of the affected DOT Agencies (*i.e.*, Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their industry’s annual random drug and/or alcohol testing rate.

Estimated total number of respondents: 3,593,202.

Estimated number of Responses: 11,858,782.

Frequency of Response: The information will be collected annually.

Estimated Total Number Burden Hours: 1,287,811.

PRA item	Number of respondents	Number of responses	Burden hours	Salary costs (\$)
Exemptions from Regulation Provisions Requests [40.7(a)]	1	1	3	\$104
Employer Stand-down Waiver Requests [40.21(b)]	0	0	0	0
Employee Testing Records from Previous Employers [40.25(a)]	584,628	3,538,179	471,757	16,379,410
Employee Release of Information [40.25(f)]	3,538,179	3,538,179	235,878	8,189,704
MIS Form Submission [40.26]	17,840	17,840	26,760	929,107
Collector (Qualification and Refresher) Training Documentation (40.33(b) & (e))	5,000	5,000	333	11,561
Collector Error Correction Training Documentation [40.33(f)]	12,000	19,625	1,308	45,425
Laboratory Reports to DOT Regarding Unlisted Adulterant [40.91(e)]	0	0	0	0
Semi-Annual Laboratory Reports to Employers [40.111(a)]	23	385,854	25,723	893,123
Semi-Annual Laboratory Reports to DOT [40.111(d)]	23	46	3	106
Medical Review Officer (MRO) (Qualifications and Continuing Education) Training Documentation [40.121(c) & (d)]	1,000	1,000	66	2,291
MRO Review of Negative Results Documentation [40.127(b)(2)(ii)]	5,000	381,055	25,403	881,992
MRO Failure to Contact Donor Documentation [40.131(c)(1)]	5,000	63,827	4,255	147,738
MRO Effort to Contact DER Documentation [40.131(c)(2)(iii)]	5,000	63,827	4,255	147,738
DER Successful Contact Employee Documentation [40.131(d)]	51,061	51,061	3,404	118,190
DER Failure to Contact Employee Documentation [40.131(d)(2)(i)]	12,765	12,765	851	29,547
MRO Verification of Positive Result Without Interview Documentation [40.133]	5,000	12,765	851	29,547
Adulterant/Substitution Evaluation Physician Statements [40.145(g)(2)(ii)(d)]	0	0	0	0

PRA item	Number of respondents	Number of responses	Burden hours	Salary costs (\$)
MRO Cancellation of Adulterant/Substitution for Legitimate Reason Reports [40.145(g)(5)]	0	0	0	0
Employee Admission of Adulterating/Substituting Specimen MRO Determination [40.159(c)]	40	40	3	104
Split Specimen Requests by MRO [40.171(c)]	5,000	7,206	480	16,680
Split Failure to Reconfirm for Drugs Reports by MRO [40.187(b)]	35	34	2	69
Split Failure to Reconfirm for Adulterant/Substitution Reports by MRO [40.187(c)]	5	5	1	34
Shy Bladder Physician Statements [40.193(f)]	773	773	64	2,238
MRO Statements Regarding Physical Evidence of Drug Use [40.195(b) & (c)]	0	0	0	0
Drug Test Correction Statements [40.205 (b)(1) & (2)]	25,000	154,732	20,630	716,308
Breath Alcohol Technician (BAT)/Screening Test Technician (STT) (Qualification and Refresher) Training Documentation [40.213(b)(c) & (e)]	2,000	2,000	133	4,617
BAT/STT Error Correction Training Documentation [40.213(f)]	168	168	11	390
Complete DOT Alcohol Testing Forms [40.225(a)]	10,000	3,378,454	450,460	15,639,989
Evidential Breath Testing Device Quality Assurance/Calibration Records [40.233(c)(4)]	10,000	10,000	666	23,123
Shy Lung Physician Statements [40.265(c)(2)]	168	168	11	390
Alcohol Test Correction Statements [40.271(b)(1) & (2)]	337	337	22	781
Substance Abuse Professional (SAP) (Qualification and Continuing Education) Training Documentation [40.281(c) & (d)]	3,334	3,334	222	7,707
Employer SAP Lists to Employees [40.287]	10,000	115,713	7,714	267,837
SAP Reports to Employers [40.311(c),(d) & (e)]	10,000	94,456	6,297	218,634
Correction Notices to Service Agents [40.373(a)]	25	25	25	868
Notice of Proposed Exclusion (NOPE) to Service Agents [40.375(a)]	5	5	50	1,736
Service Agent Requests to Contest Public Interest Exclusions (PIE) [40.379(b)]	2	2	2	69
Service Agent Information to Argue PIE [40.379(b)(2)]	2	2	8	277
Service Agent Information to Contest PIE [40.381(a) & (b)]	2	2	8	277
Notices of PIE to Service Agents [40.399]	1	1	1	34
Notices of PIE to Employer and Public [40.401(b) & (d)]	1	1	1	34
Service Agent PIE Notices to Employers [40.403(a)]	1	300	150	5,208
Total New	3,593,202	11,858,782	1,287,811	44,712,987

Public Comments Invited: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Issued in Washington, DC on September 23, 2020.

Bohdan Baczara,

Deputy Director, DOT, Office of Drug and Alcohol Policy and Compliance.

[FR Doc. 2020-21399 Filed 9-29-20; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Longevity Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with the reporting burden associated with longevity annuity contracts.

DATES: Written comments should be received on or before November 30, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Longevity Annuity Contracts.

OMB Number: 1545-2234.

Regulation Project Number: TD 9673; Form 1098-Q.

Abstract: This collection covers final regulations relating to the use of longevity annuity contracts in tax qualified defined contribution plans under section 401(a) of the Internal Revenue Code (Code), section 403(b) plans, individual retirement annuities and accounts (IRAs) under section 408, and eligible governmental plans under section 457(b).

Form 1098-Q is used to comply with the reporting requirements under TD 9673. Any person who issues a contract intended to be a QLAC that is purchased or held under any plan, annuity, or account described in section 401(a),

403(a), 403(b), 408 (other than a Roth IRA) or eligible governmental plan under section 457(b), must file Form 1098-Q.

Current Actions: There are no changes to the burden previously approved by OMB. This submission is for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, individuals or households.

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 8 min.

Estimated Total Annual Burden Hours: 28,529.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 23, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020-21613 Filed 9-29-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Revenue Procedure 2017-41

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with the procedures outlined in RP 2017-41 for issuing Opinion Letters regarding the qualification in form of Pre-approved Plans under sections 401, 403(a), and 4975(e)(7).

DATES: Written comments should be received on or before November 30, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Master and Prototype and Volume Submitter Plans.

OMB Number: 1545-1674.

Regulation Project Number: RP 2017-41.

Abstract: This revenue procedure modifies Rev. Proc. 2015-36 and sets forth the procedures for the merger of the master and prototype (M&P) program with the volume submitter (VS) plan. This revenue procedure requires employers adopting pre-approved plans to complete and sign new signature pages or new adoption agreements, as applicable, in order to restate their plans for recent changes in the law. This

revenue procedure require sponsors of pre-approved plans to furnish copies of their plans to the Service's Employee Plans Determinations office, maintain records of employers that have adopted their plans, prepare and communicate any necessary interim amendments to adopting employers, make reasonable and diligent efforts to ensure that employers restate their plans when necessary, and notify employers if the sponsor concludes that employers' plans are no longer qualified provides that mass submitters must keep records of their user fees. This allows mass submitters to certify to the number of other practitioners seeking approval of the identical pre-approved plan.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This request is being submitted for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 321,500.

Estimated Time Per Respondent: 3 Hrs., 45 min.

Estimated Total Annual Burden Hours: 1,108,225.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 23, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020-21611 Filed 9-29-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0655]

Agency Information Collection Activity Under OMB Review: Residency Verification Report—Veterans and Survivors

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900-0655.”

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421-1354 or email danny.green2@va.gov. Please refer to “OMB Control No. 2900-0655” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501-21.

Title: Residency Verification Report—Veterans and Survivors (FL21-914).
OMB Control Number: 2900-0655.

Type of Review: Reinstatement of a currently approved collection.

Abstract: Form Letter 21-914 is used to gather information which is necessary to verify whether a veteran or beneficiary who is receiving benefits at the full-dollar rate based on U.S. residency continues to meet the residency requirements. Continued eligibility to benefits at the full-dollar rate cannot be determined without complete information about a veteran’s or beneficiary’s residency.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 119 on June 19, 2020, page 37157.

Affected Public: Individuals or Households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,250.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020-21549 Filed 9-29-20; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

Vol. 85

Wednesday,

No. 190

September 30, 2020

Part II

The President

Proclamation 10084—National Hunting and Fishing Day, 2020

Presidential Documents

Title 3—

Proclamation 10084 of September 25, 2020

The President

National Hunting and Fishing Day, 2020

By the President of the United States of America**A Proclamation**

On National Hunting and Fishing Day, we pause to reflect on the breathtaking natural wonders and resources that abound throughout our great Nation. American hunters, anglers, and outdoorsmen are entrusted with stewardship of these treasured blessings, sustaining our lands and waters through recreation and conservation efforts. These men and women also make substantial contributions to local economies, supporting individuals and communities and preserving longstanding American sporting traditions.

As they have been since the founding of our country, hunting and fishing remain an integral part of the American identity. In addition to being great stewards of the land, hunters and anglers are also keepers of our rich ecological and conservation traditions, which have been passed down through generations. Hunting and fishing have long functioned as an effective means to manage certain wildlife populations, and time spent in nature promotes awareness of best practices for effectively managing ecosystems throughout the United States. In addition, sales of licenses, tags, and other permits support conservation efforts and contribute to research that furthers our understanding of how to best care for our natural environment. The men and women who hunt and fish our lands and waters cultivate a deep respect for our natural resources and foster greater understanding of mankind's relation to nature, sustaining a uniquely American ethos rooted in the values of individualism and self-sufficiency.

In addition to the importance of hunting and fishing to our cultural heritage, hunters and anglers also help fuel our economy. In 2017, outdoor recreation in the United States supported 5.2 million jobs. These jobs and the activities they support contribute more than \$70 billion to our economy and account for more than 2 percent of the United States' gross domestic product. Many hunting and fishing jobs are located in rural communities, focusing economic activity in areas that are often in need of investment and support.

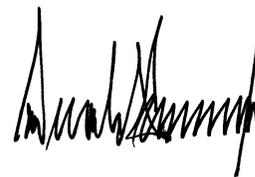
Because of the vital importance of hunting and fishing to the health of our lands and waters and the strength of our national economy, I have championed conservation efforts and supported American outdoorsmen since my first day in office. In March of 2019, I signed into law the John D. Dingell, Jr. Conservation, Management, and Recreation Act, marking the most important public lands designation in a decade. This legislation, combined with other actions taken at my direction by the Department of the Interior, has expanded or proposed to expand nearly 4 million acres across the country to hunting and fishing. To further preserve our Nation's natural resources for the American people, this past August I signed the Great American Outdoors Act—the largest single investment ever in America's public lands. This historic legislation provides \$900 million a year in permanent funding to the Land and Water Conservation Fund, allocates \$9.5 billion over 5 years to restore our public lands, and won the endorsement of more than 850 conservation groups and 43 sportsmen and sportswomen groups.

On National Hunting and Fishing Day, we emphasize our appreciation for the majestic natural beauty of our Nation, and we celebrate the stewards

of the great American traditions that are tied to our lands and waters. Together, we commit to supporting hunting and fishing throughout the United States and passing on these cherished traditions to future generations, securing a future for sportsmanship and conservation in our country.

NOW, THEREFORE, I, DONALD TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 26, 2020, as National Hunting and Fishing Day. I call upon the people of the United States to observe this day by sharing the great outdoors with your family and friends, and practice conservation and preservation with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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