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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

[Docket No. RHS-20-MFH-0027]

RIN 0575-AD15

Guaranteed Rural Rental Housing Change in Initial Guarantee Fee and Annual Guarantee Fee

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency) published a proposed rule, September 3, 2019, proposing to amend its regulation to remove the stated amount that the Agency will charge for the initial and annual guarantee fees. The regulation change will allow the Agency the flexibility to establish or make any future changes to the initial and annual guarantee fees without the need for a regulatory change. Through this action, RHS finalizes the proposed rule without any substantive revisions.

DATES: Effective January 4, 2021.

FOR FURTHER INFORMATION CONTACT:

Abby Boggs, Acting Branch Chief, Multi-Family Housing Programs, Rural Housing Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250-0781, Telephone: (615) 490-1371 (this is not a toll-free number); email: abby.boggs@usda.gov.

SUPPLEMENTARY INFORMATION:

Background and Summary of Changes

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p-2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. Section 538(g) authorizes the Secretary of Agriculture to charge certain fees to lenders for loan

guarantees. See 42 U.S.C. 1490p-2(g). The charged fees are required to be used to offset costs associated with loan guarantees. ID at 1490p-2(u).

The Agency's GRRHP implementing regulation is at 7 CFR part 3565 and currently sets the exact percentage of the initial guarantee fee and the annual guarantee fee charged by the Agency. The Agency is proposing to amend the regulation by removing the language that indicates the specific amount of the initial guarantee fee and the annual guarantee fee currently charged by the Agency. The Agency is making this change to allow for flexibility and to allow the program to create the maximum housing affordability to residents by lowering program costs when practical. In most cases, the annual guarantee fee is passed onto the borrower, where it is most likely included in the interest rate. Thus, any reduction in the fee will result in a lower interest rate and would ultimately create a reduction in rental rates.

The calculation of the initial guarantee fee is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan times the Guarantee Fee Rate. The initial guarantee fee will be due at the time the closing package is submitted to the Agency for review and approval. The GRRHP annual fee is a non-refundable amount that the lender must pay the year that the loan closes and going forward each year that the loan guarantee remains in effect.

If changes do occur in the fee amounts, the Agency will release those changes through a Notice in the **Federal Register**. When the fee changes are announced in the **Federal Register**, the Agency will provide guidance on how to process the loans which will be impacted by the new fee structure. Interested parties will be able to locate current fees on the Agency's public website.

The Agency published a proposed rule on September 3, 2019 at 84 FR 45927-45929, proposing to amend its regulation to remove the stated amount that the Agency will charge for the initial and annual guarantee fees. Three comments were received. Two commenters were in full support of the rule change. One commenter supports the rule; however, they suggested that the Agency establish a maximum limit on the annual fee amount. The Agency

will not adopt this comment to establish a maximum limit on the annual fee amount as the intention of this regulation change is to offer flexibility in adjusting fees each year. This regulatory action will adopt the process of announcing the amount of fees charged through a published notice in the **Federal Register**, consistent with other RD programs, including the OneRD Guarantee Loan regulation. Therefore, RHS is moving forward with finalizing this rule.

Executive Order 12866—Classification

This final rule has been determined to be non-significant and; therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Authority

The GRRHP is administered subject to appropriations by the United States Department of Agriculture (USDA) as authorized under the Housing Act of 1949 as amended, Section 538, Public Law 106-569, 42 U.S.C. 1490p-2.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of Government. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of USDA (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with “Federal mandates” that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other Information Technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Programs Affected

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438—Rural Rental Housing Guaranteed Loans (Section 538).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or Rural Development’s Native American Coordinator at: AIAN@wdc.usda.gov to request such a consultation.

Executive Order 12372—Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Non-Discrimination Statement

In accordance with Federal civil rights law and the United States Department of Agriculture civil rights regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or

activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992, submit your completed form or letter to USDA by:

- (1) *Mail*: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;
- (2) *Fax*: (202) 690–7442; or
- (3) *Email*: program.intake@usda.gov.

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List of Subjects in 7 CFR 3565

Conflict of interest, Credit, Fair housing, Loan programs—housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RHS amends 7 CFR part 3565 as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

- 1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Guarantee Requirements

- 2. Amend § 3565.53 by adding a sentence at the end of the introductory text and revising paragraphs (a) and (b) to read as follows:

§ 3565.53 Guarantee fees.

* * * Changes to the initial and annual guarantee fees will be established by the Agency and will be

published in a notice in the **Federal Register**.

(a) *Initial guarantee fee.* The Agency will establish and charge an initial guarantee fee of up to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) *Annual guarantee fee.* An annual guarantee fee will be charged, as established by the Agency, each year or portion of a year that the guarantee is in effect. This fee is due no later than February 28, of each calendar year.

* * * * *

Elizabeth Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2020–25822 Filed 12–2–20; 8:45 am]

BILLING CODE 3410–XV–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2020–0019]

Advisory Opinions Policy

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Procedural rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its final Advisory Opinions Policy (Advisory Opinions Policy), which sets forth procedures to facilitate the submission by interested parties of requests that the Bureau issue advisory opinions, in the form of interpretive rules, to resolve regulatory uncertainty, and the manner in which the Bureau will evaluate and respond to such requests.

DATES: The Advisory Opinions Policy was applicable beginning November 30, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information about the Advisory Opinions Policy contact Jaydee DiGiovanni and Shelley Thompson, Counsels; and Adetola Adenuga, Regulatory Implementation and Guidance Specialist, at 202–435–7158. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: On June 22, 2020, the Bureau published and sought public comment on a proposal (Advisory Opinions Proposal) for a new Bureau policy on advisory opinions and simultaneously launched a pilot

advisory opinion program (Pilot Advisory Opinions program).¹ This notice finalizes the Advisory Opinions Proposal as the Advisory Opinions Policy (Advisory Opinions Policy). Part I provides some background on the Bureau's guidance functions and related statutory authorities. Part II sets out the final text of the Advisory Opinions Policy. Part III reviews the comments received on the Advisory Opinions Proposal and describes the changes the Bureau has made in the final Advisory Opinions Policy. Parts IV through VI address additional regulatory matters.

I. Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),^{2,3} the Bureau's "primary functions" include issuing guidance implementing Federal consumer financial law. Providing clear and useful guidance to regulated entities is an important aspect of facilitating markets that serve consumers.

The Bureau currently issues several types of guidance regarding the statutes that it administers, as well as implementing regulations and Official Interpretations. For example, the Bureau issues "Compliance Aids" that present legal requirements in a manner that is useful for compliance professionals, other industry stakeholders, and the public, or that include practical suggestions for how entities might choose to comply with those requirements.⁴ The Bureau also provides individualized "implementation support" to regulated entities through its Regulatory Inquiries Function (RIF).⁵ Neither Compliance Aids nor the RIF are intended to interpret ambiguities in legal requirements. The Bureau also may issue interpretive rules, which provide guidance on the Bureau's regulations or governing statutes, and which in some situations may provide a safe harbor to regulated entities that are in compliance with the Bureau's interpretive rule.⁶

The Bureau initiated its policy for issuing advisory opinions in response to

feedback received from external stakeholders in the 2018 Guidance RFI, encouraging the Bureau to provide written guidance in cases of regulatory uncertainty. The final Advisory Opinions Policy supersedes the pilot Advisory Opinions Program.⁷ Similar to the advisory opinion programs of many other federal agencies, the Advisory Opinions Policy is intended to facilitate timely guidance by the Bureau that enables compliance by resolving outstanding regulatory uncertainty. The Advisory Opinions Policy supports the Bureau's statutory purpose of ensuring consumers have access to markets for consumer financial products and services, and that markets for consumer financial products and services are fair, transparent, and competitive.⁸

II. Final Text of the Advisory Opinions Policy

A. Overview

The primary purpose of this Advisory Opinions Policy is to establish procedures to facilitate the submission by interested parties of requests that the Bureau issue advisory opinions and the manner in which the Bureau will evaluate and respond to such requests. Advisory opinions will be interpretive rules issued to resolve regulatory uncertainty.⁹

B. Submission and Content of Requests

Requests for advisory opinions should be submitted via email to advisoryopinion@cfpb.gov or through other means designated by the Bureau. The Bureau will not consider a request for an advisory opinion to be complete unless the request includes all of the information specified in the following paragraphs.

1. *Confidential information:* The request must identify information the requestor believes should be treated as confidential. If the requestor would not normally make the information public, the Bureau intends to withhold that information from public disclosure to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552(b), and treat the information as confidential in accordance with the Bureau's regulations on Disclosure of Records

⁷ Because the Advisory Opinions Policy replaces the pilot, no further requests may be submitted for the pilot as of November 30, 2020. Requests submitted under the pilot that are pending as of that date will continue to be considered by the Bureau.

⁸ See 12 U.S.C. 5511(a).

⁹ For convenience, this document uses the term "regulatory uncertainty" to encompass uncertainty with respect to regulatory or, where applicable, statutory provisions.

¹ See Advisory Opinions Pilot, 85 FR 37394 (June 22, 2020).

² Public Law 111–203, 124 stat. 2081 (2010).

³ See 12 U.S.C. 5511(c)(5).

⁴ See Policy Statement on Compliance Aids, 85 FR 4579 (Jan. 27, 2020).

⁵ See Bureau of Consumer Financial Protection Request for Information Regarding Bureau Guidance and Implementation Support (Guidance RFI), 83 FR 13959, 13961–62 (Apr. 2, 2018).

⁶ E.g., Treatment of Pandemic Relief Payments Under Regulation E and Application of the Compulsory Use Prohibition, 85 FR 23217 (Apr. 27, 2020); Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 FR 63791 (Nov. 19, 2019).

and Information.¹⁰ Requests should not include sensitive personal information, such as account numbers or Social Security numbers, or names of individuals.

2. *Identity of person or entity seeking the advisory opinion.* The request must identify the person or entity seeking the advisory opinion, as well as the identity of any person or entity submitting the request on behalf of a third party (*i.e.*, one or more clients or members). Outside counsel, a trade association, or a consumer advocacy group, for example, may submit requests for advisory opinions on behalf of one or more clients or members, and those entities do not need to be identified.

3. *Statement about the absence of investigation or litigation.* The request must include a statement that the issue on which the advisory opinion is being requested is—or is not—the subject of any known or reasonably knowable active litigation or Federal or State agency investigation. Additionally, if the requestor is submitting a request on behalf of an unidentified third party, the requestor must provide a statement that the unidentified third party is—or is not—the subject of an ongoing public Bureau enforcement action or an ongoing Bureau enforcement investigation.

4. *Specifics about the issue on which the advisory opinion is sought.* The issue raised in the request must be within the Bureau's purview,¹¹ and the request must concern actual facts or a course of action that the requestor (or third party) is engaged in, or considering engaging in. The request must set forth as completely as possible, all material facts and circumstances, including detailed specification of the legal question(s) and supporting facts with respect to which the requestor seeks an advisory opinion. The request must also identify the regulatory or statutory provision at issue and the potential uncertainty or ambiguity that the proposed interpretation would address, provide a proposed interpretation of law or regulation, and explain why the proposed interpretation is an appropriate resolution of that

uncertainty or ambiguity.¹² Requestors may also choose to offer additional information, including, as applicable, an explanation of the potential consumer benefits and risks associated with resolution of the interpretive question and the proposed interpretation; and an explanation of how the proposed interpretation relates to the Bureau's statutory objectives.¹³

Alternatively, in some cases the Bureau may decide to issue an advisory opinion based on questions the Bureau receives from the public, through other channels, that are not requests for advisory opinions.¹⁴

C. Characteristics of Advisory Opinions

Advisory Opinions issued by the Bureau under the Advisory Opinions Policy will be interpretive rules under the Administrative Procedure Act (APA)¹⁵ that respond to a specific need for clarity on a statutory or regulatory interpretive question. The Bureau will publish advisory opinions in the **Federal Register** and on *consumerfinance.gov*, including a summary of the material facts or covered products and the Bureau's legal analysis of the issue.

Unless otherwise stated, each advisory opinion will be applicable to the requestor and to similarly situated parties to the extent that their situations conform to the summary of material facts or coverage in the advisory opinion. The scope and terms of an advisory opinion will be set out in the advisory opinion itself, and may deviate from the interpretation proposed by the requestor in its submission.¹⁶ Moreover, the Bureau will not normally investigate the underlying facts of the requestor's situation and, as a result, an advisory opinion may not be applicable to the requestor if the underlying facts of the

requestor's situation do not conform to the summary of material facts.

If a statutory safe harbor is applicable to an advisory opinion, the advisory opinion will explain that fact. The Truth in Lending Act (TILA), Equal Credit Opportunity Act (ECOA), Electronic Fund Transfer Act (EFTA), and Real Estate Settlement Procedures Act (RESPA) provide certain protections from liability for acts or omissions done in good faith in conformity with an interpretation by the Bureau.¹⁷ The Fair Debt Collection Practices Act (FDCPA) contains similar protections, specifically using the term "advisory opinion."¹⁸

D. Factors in Bureau Selection of Topics for Advisory Opinions

The Bureau intends to consider the following factors as part of its consideration of whether to address requests for advisory opinions.¹⁹ The Bureau will prioritize open questions if they are within the Bureau's purview that can legally be addressed through an interpretive rule and if an advisory opinion is an appropriate tool relative to other Bureau tools for answering the question. Initial factors weighing for the appropriateness of an advisory opinion include: (1) The interpretive issue has been noted during prior Bureau examinations as one that might benefit from additional regulatory clarity; (2) the issue is one of significant importance or one whose clarification would provide significant benefit; and/or (3) the issue concerns an ambiguity that the Bureau has not previously addressed through an interpretive rule or other authoritative source. Factors weighing strongly for presumption that an advisory opinion is not an appropriate tool include: (1) The interpretive issue is the subject of an ongoing Bureau investigation or enforcement action; (2) the interpretive issue is the subject of an ongoing or planned rulemaking; (3) the issue is better suited for notice-and-comment rulemaking; (4) the issue could be addressed more effectively through a Compliance Aid or the RIF function; or (5) there is clear existing Bureau or court precedent that is available to the public on the issue.

The Bureau intends to further evaluate requests for advisory opinions

¹⁰ 12 CFR part 1070.

¹¹ Under title X of the Dodd-Frank Act (the Consumer Financial Protection Act of 2010), the Bureau was created to regulate the offering and provision of consumer financial products and services under federal consumer financial laws. 12 U.S.C. 5881. The Act enumerates several consumer laws under the Bureau's jurisdiction (in part or whole). 12 U.S.C. 5841(12). Note that the Bureau's Regulation J provides a separate procedure for advisory opinions regarding certain issues under the Interstate Land Sales Full Disclosure Act. See 12 CFR 1010.17.

¹² The responsive advisory opinion will not necessarily adopt the requestor's proposed interpretation. The Bureau retains the discretion to answer requests with its own interpretation regardless of the requestor's proposed interpretation.

¹³ Requestors should describe relevant legal provisions and arguments with as much specificity as practicable. The Bureau recognizes that in some cases, the requestor may lack the legal resources to provide a detailed and complete showing. In such circumstances, the requestor should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

¹⁴ In that situation, references in this Advisory Opinions Policy to the requestor or request are inapplicable. Note that the Bureau may also issue interpretive rules outside the framework of the Advisory Opinions Policy, including deciding to issue advisory opinions on its own initiative.

¹⁵ 5 U.S.C. 553(b).

¹⁶ Thus, the initial request drafted by the requestor is not necessarily a reliable guide to the scope and terms of the advisory opinion.

¹⁷ See 15 U.S.C. 1640(f) (TILA); 15 U.S.C. 1691e(e) (ECOA); 15 U.S.C. 1693m(d) (EFTA); 12 U.S.C. 2617, 12 CFR 1024.4 (RESPA).

¹⁸ See 15 U.S.C. 1692(k)(e).

¹⁹ The following are factors that the Bureau intends to weigh when deciding which topics to prioritize in the Advisory Opinions Policy, based on all of the information available to the Bureau. Advisory opinion requests need not address these factors in order to be fully considered by the Bureau.

based on secondary factors, including: Alignment with the Bureau's statutory objectives; size of the benefit offered to consumers by resolution of the interpretive issue; known impact on the actions of other regulators; and impact on available Bureau resources. The Bureau will primarily focus on the following statutory objectives: (1) Consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (3) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (4) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.²⁰

The Bureau will focus primarily on clarifying ambiguities in its regulations, although Advisory Opinions may clarify statutory ambiguities. The Bureau will not issue advisory opinions on issues that require, or are better addressed through, a legislative rulemaking under the APA.²¹ For example, the Bureau does not intend to issue an advisory opinion that would change regulation text or commentary. Similarly, if a regulation or statute establishes a general standard that can only be applied through highly fact-intensive analysis, the Bureau does not intend to replace that analysis with a bright-line standard that eliminates all of the required analysis. Highly fact-intensive applications of general standards, such as the statutory prohibition on unfair, deceptive, or abusive acts or practices, pose particular challenges for issuing advisory opinions, although there may be times when the Bureau is able to offer advisory opinions that provide additional clarity on the meaning of such standards.

²⁰ See 12 U.S.C. 5511(b)(1), (3)–(5). The Bureau has a further statutory objective, that consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination. 12 U.S.C. 5511(b)(2). The Bureau considers this objective to be at least as important as its other objectives, and it does not plan to issue an advisory opinion that is in conflict with this objective. But because other regulatory tools are often more suitable for addressing UDAPs and discrimination, the Bureau has chosen not to highlight this objective as a primary focus when selecting issues for the Advisory Opinions Policy.

²¹ 5 U.S.C. 553(b).

E. Public Input

Advisory opinions will be issued and final upon publication in the **Federal Register**. However, interested persons may provide input on published advisory opinions at any time by sending an email to advisoryopinion@cfpb.gov or through other means designated by the Bureau. The Bureau is particularly interested in input that addresses whether an advisory opinion would benefit from clarification or reconsideration, with information about the factual or legal basis for clarification or reconsideration.

III. Discussion of Comments and Changes in the Final Advisory Opinions Policy

A. Overview

The Bureau solicited comments on the Advisory Opinions Proposal. The Bureau received 16 unique comments, 13 of which were submitted by industry trade associations. A consortium of 7 consumer advocacy groups submitted a joint comment letter. The remaining comments were provided by staff of the Administrative Conference of the United States (ACUS) and one anonymous submitter. The Bureau has made certain changes to the Advisory Opinions Policy based on the comments, as discussed below, as well as other changes to the Advisory Opinions Policy for clarity.

B. General Comments

Industry commenters uniformly supported the Advisory Opinions Proposal, as did the anonymous commenter. These commenters generally stated that the issuance by the Bureau of advisory opinions could aid in compliance in situations where there are statutory and regulatory uncertainties. Conversely, the joint comment letter by certain consumer advocacy groups generally opposed the Advisory Opinions Proposal and argued that the Bureau should abandon it. The Bureau has carefully considered this comment letter, but contrary to the group's assertions, and as discussed below the Bureau concludes that issuing interpretive rules in the form of advisory opinions is consistent with the APA or with the Bureau's statutory authorities. The Bureau also does not agree that advisory opinions are not an appropriate use of Bureau resources. Advisory opinions represent a commitment of resources by the Bureau that will help entities better understand their obligations under Federal consumer financial law. If an advisory opinion makes clear the law applies, it will promote compliance with the law

that will prevent consumer harm. If an advisory opinion makes clear the law does not apply, it will avoid regulated entities incurring unnecessary compliance costs.

C. Legality of Advisory Opinions Policy

The consumer advocacy group comments stated that issuing interpretive rules in the form of advisory opinions are inconsistent with the APA and with the Bureau's statutory authorities. The Bureau disagrees with this assertion. As proposed, the advisory opinions are interpretive rules under the APA.²² Nevertheless, the Bureau revised the phrase in the proposed Advisory Opinions Policy that states that "substantive importance or impact" is one of a list of factors that the Bureau intends to consider in part II.D so that it reads "significant importance." This change is intended to address the commenter's concern that the phrase might be read to suggest that the Bureau intends to issue advisory opinions that are substantive rules rather than interpretive rules under the APA.

D. Role of Public Input

The Bureau received a number of comments from stakeholders expressing interest in a mechanism for soliciting public input on advisory opinions, either before or after issuance. Some commenters advocated that the Bureau obtain such input from the public before issuing advisory opinions. The Bureau notes that there is nothing in the Advisory Opinions Policy that would prevent the Bureau from soliciting input on a draft advisory opinion before finalizing, if the Bureau believes it would be appropriate for a given advisory opinion. However, the Bureau declines to adopt this as a uniform requirement for advisory opinions. Such a process is not typical of peer financial regulators' advisory opinion policies.²³ It could unnecessarily delay the process of issuing advisory opinions, and thus inhibit the ability of the Bureau to promptly provide clarity about its own regulations and the statutes that it administers.

However, the Bureau does agree that providing a mechanism for the public to provide feedback after an advisory opinion is issued could be useful. Accordingly, the Bureau has added new part II.E to the Advisory Opinions Policy to provide that any person may comment on an advisory opinion via email to advisoryopinion@cfpb.gov or through other means designated by the

²² See 5 U.S.C. 552(b)(3).

²³ E.g., 16 CFR 1.2–1.6 (Federal Trade Commission).

Bureau. The Bureau encourages any stakeholders including, but not limited to, industry representatives and consumer advocates, to submit such feedback in an instance where stakeholders believe the Bureau should clarify or reconsider an advisory opinion.

E. Accuracy of Requests

Certain consumer advocacy group commenters expressed concern that the requestor's presentation of the issue might be inaccurate or misleading. However, the Bureau emphasizes that it expects requestors to provide truthful submissions to the Bureau. While it is possible that the submitting party may provide inaccurate or misleading facts, doing so would put at great risk the benefit the requester might obtain from an advisory opinion. The Advisory Opinions Policy specifically explains that "an advisory opinion may not be applicable to the requestor if the underlying facts of the requestor's situation do not conform to the Bureau's summary of material facts" in the advisory opinion. The Bureau concludes that this disincentive is sufficient to address the concern commenters have raised. For the same reason, the Bureau does not believe it is necessary to require requestors to include an affirmation that the information provided is accurate, as some commenters suggested.

F. Follow-Up by Requestors

Some commenters asked the Bureau to provide a mechanism for requestors to modify or rescind pending advisory opinion requests. The Bureau notes that it would be consistent with the Advisory Opinions Policy for a requestor to amend or withdraw a pending request.

If the Bureau informs a requestor that it has not chosen to issue an advisory opinion, some commenters advocated that the Bureau create a specific procedure for the requestor to appeal or request reconsideration of that decision. The Bureau does not believe adding a specific procedure to address that possibility is necessary, because the Advisory Opinions Policy would allow a requestor to renew its request a subsequent time if it wants to bring new facts, law, or other considerations to the Bureau's attention.

G. Third-Party Requests

Part II.B of the Advisory Opinions Proposal stated that the Bureau would accept advisory opinion requests from trade associations, service providers, and other third parties; however, the Advisory Opinions Proposal noted that

if the requestor is submitting a request on behalf of an unidentified third party, the requestor must provide a statement on whether the unidentified third party is the subject of an ongoing public Bureau enforcement action or an ongoing Bureau enforcement investigation conducted by the Bureau's Office of Enforcement.²⁴ This statement was in addition to the general requirement that any requestor provide a statement of whether the issue on which the advisory opinion is being requested is the subject of any known or reasonably knowable active litigation or Federal or State agency investigations. Trade association commenters generally supported the Bureau's proposal to allow third parties to request advisory opinions. These commenters stated that allowing third parties to facilitate requests would increase access to advisory opinions, in particular for smaller entities that might otherwise lack the resources to request an advisory opinion.

Certain consumer advocacy groups opposed the proposal to allow requests on behalf of third parties. These commenters argued that the Bureau would have insufficient details about the underlying facts of the third party's situation. The Bureau agrees that it is possible for requests on behalf of a third party, like any type of request, to include insufficient facts for the Bureau to reach a legal conclusion. However, that would be a potential reason for denying an individual request, not entirely closing off this potential source of requests for advisory opinions.

These commenters also asserted that the Bureau must know the identity of the third party in order to avoid interference with litigation or enforcement-related proceedings. However, the Bureau concludes that the categorical, express representations that the requestor would need to make under the Advisory Opinions Policy are sufficient to alert the Bureau to those proceedings of which the Bureau would not otherwise be aware that are likely to be relevant to a potential advisory opinion and about which further Bureau inquiry may be warranted. The Bureau is finalizing the required statements, with non-substantive wording changes in part II.B of the Advisory Opinions Policy.²⁵

²⁴ 85 FR 37394 (June 22, 2020).

²⁵ One commenter suggested that the Bureau provide sample language that requestors can use when making these required statements. The Bureau has instead made non-substantive edits to how the required statements are set out in part II.B of the Advisory Opinions Policy, so that requestors can choose to comply by using the applicable language in the Advisory Opinions Policy verbatim.

H. Rescission of Advisory Opinions

It is, of course, possible that the Bureau may decide it is appropriate to rescind an advisory opinion. One commenter emphasized that, if an advisory opinion is rescinded, no action should be taken against those institutions who acted in good faith in accordance with the advisory opinion. The Bureau notes that several statutes provide protections from liability for acts or omissions done in good faith in conformity with an interpretation by the Bureau, as detailed in the text of the Advisory Opinions Policy. And of course, in addition to any applicable safe harbors, the Bureau would not expect to retroactively impose punishments on persons who conformed their conduct in good faith to an advisory opinion before the advisory opinion was rescinded. Doing so would raise serious concerns under the Due Process Clause, which restricts such retroactive relief.

I. Confidentiality of Material in Advisory Opinion Requests

Part II.B of the Advisory Opinions Proposal explained that where information submitted to the Bureau is information the requestor would not normally make public, the Bureau intends to treat it as confidential pursuant to its rule, Disclosure of Records and Information, to the extent applicable.²⁶

Industry commenters were broadly supportive of this approach. However, certain consumer advocacy groups asserted that this statement is in tension with the Freedom of Information Act (FOIA). To be clear, the Bureau will treat information that it receives in accordance with FOIA, including the FOIA exemption at 5 U.S.C. 552(b)(4) that applies to confidential business information. Information that is subject to a FOIA exemption also will be treated as confidential in accordance with the Bureau's rule on Disclosure of Records and Information, 12 CFR part 1070. The confidentiality assurance in the proposed policy reflects the standard for determining applicability of the exemption at 5 U.S.C. 552(b)(4), established by the United States Supreme Court in *Food Marketing Institute v. Argus Leader Media dba Argus Leader*, 139 S. Ct. 2356 (2019). To make this clearer, the Bureau revises the policy to state explicitly that the information will be treated in accordance with FOIA.

²⁶ 12 CFR 1070.

J. Other Comments on Specific Implementation Issues

The Bureau received comments on a number of other subjects. These include comments on the structure of the Bureau's internal deliberative process for considering advisory opinion requests; timelines for deciding advisory opinion requests; details of how the Bureau should communicate with requestors after the Bureau receives their requests, such as what the Bureau should say in the letters that it sends denying requests; general outreach that commenters recommend that the Bureau conduct with outside bodies or groups; recommendations regarding the types of requests the Bureau should prioritize; and details of how the Bureau should post advisory opinions on its website.

The Bureau appreciates receiving commenters' views on all aspects of the program. However, the Bureau has decided not to expand the scope of the Advisory Opinions Policy, which is intended to establish the general procedures of the program, to cover these specific implementation issue. Instead, the Bureau will consider these comments as it proceeds with implementation of the Advisory Opinions Policy.

IV. Regulatory Requirements

This Advisory Opinions Policy is a rule of agency organization, procedure, or practice, and it is therefore exempt from the notice-and-comment rulemaking requirements of the APA.²⁷ For the same reason, it is not subject to the 30-day delayed effective date for substantive rules under the APA.²⁸ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²⁹

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that Federal agencies may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements as contained in this final Policy and identified below have been approved by OMB and assigned the OMB control number 3170-0072. OMB's approval will expire on November 30, 2023.

The Bureau's Advisory Opinions Proposal, published June 22, 2020, sought comment on these information collection requirements. While the Bureau received numerous comments on the Advisory Opinions Proposal, which are addressed above, the Bureau received no comments specifically regarding the burden estimates or the utility or appropriateness of these information collections. Additional details on comments received can be found in the Supporting Statement for the related 30-day notice published as required under the PRA.³⁰

A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau submitted to OMB under the requirements of the PRA. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at OMB's public-facing docket at <https://www.reginfo.gov/public/>.

VI. Signing Authority

The Director of the Bureau, Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: November 30, 2020.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020-26661 Filed 12-2-20; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1031; Project Identifier AD-2020-00846-T; Amendment 39-21334; AD 2020-24-04]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The

Boeing Company Model 787-8, 787-9, and 787-10 airplanes. This AD requires revising the existing airplane flight manual (AFM) to incorporate procedures for conducting an approach with a localizer-based navigation aid, monitoring localizer raw data, calling out any significant deviations, and performing an immediate go around if the airplane has not intercepted the final approach course as shown by the localizer deviation. This AD was prompted by reports that the autopilot flight director system (AFDS) failed to transition to the instrument landing system localizer (LOC) beam after the consistent localizer capture function in the flight control modules initiated a transition to capture LOC during approach. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 18, 2020.

The FAA must receive comments on this AD by January 19, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1031.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1031; or in person at Docket Operations

²⁷ 5 U.S.C. 553(b).

²⁸ 5 U.S.C. 553(d).

²⁹ 5 U.S.C. 603(a), 604(a).

³⁰ See <https://beta.regulations.gov/docket/CFPB-2020-0019>.

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: frank.carreras@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received reports indicating that the AFDS failed to transition to the instrument landing system LOC beam after the consistent localizer capture function in the flight control modules initiated a transition to capture LOC during approach. This condition, if not addressed, could result in localizer overshoot leading to glideslope descent on the wrong heading. Combined with a lack of flight deck effects for a consistent localizer capture mode failure, this condition could result in a controlled flight into terrain.

FAA’s Determination

The FAA is issuing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires revising the existing AFM to incorporate procedures for conducting an approach with a localizer-based navigation aid, monitoring localizer raw data, calling out any significant deviations, and performing an immediate go around if the airplane has not intercepted the final approach course as shown by the localizer deviation.

Interim Action

The FAA considers this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is

developed, approved, and available, the FAA might consider additional rulemaking.

FAA’s Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the failure of the AFDS to transition to the instrument LOC beam, after the consistent localizer capture function in the flight control modules initiated a transition to capture LOC during approach, could result in localizer overshoot leading to glideslope descent on the wrong heading. Combined with a lack of flight deck effects for a consistent localizer capture mode failure, this condition could result in a controlled flight into terrain. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written comments, data, or views about this AD. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one copy of the comments. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2020–1031; Project Identifier AD–2020–00846–T” at the beginning of your comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this AD. The FAA will consider all comments received by the closing date for comments. The FAA may amend this AD because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: frank.carreras@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 144 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the AFM	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$12,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–24–04 The Boeing Company:
Amendment 39–21334 ; Docket No. FAA–2020–1031; Project Identifier AD–2020–00846–T.

(a) Effective Date

This AD is effective December 18, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by reports indicating that the autopilot flight director system (AFDS) failed to transition to the instrument landing system localizer (LOC) beam after the consistent localizer capture function in the flight control modules initiated a transition to capture LOC during approach. The FAA is issuing this AD to address the AFDS failing to transition, which could result in localizer overshoot leading to glideslope descent on the wrong heading. Combined with a lack of flight deck effects for a consistent localizer capture mode failure, this condition could result in a controlled flight into terrain.

(f) Compliance

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

(g) Revise the Airplane Flight Manual (AFM)

Within 14 days after the effective date of this AD, revise the limitations section of the existing AFM and applicable corresponding operational procedures to incorporate the procedures specified in figure 1 to paragraph (g) of this AD. Revising the existing AFM to include the changes specified in paragraph (g) of this AD may be done by inserting a copy of figure 1 to paragraph (g) of this AD into the existing AFM.

Figure 1 to paragraph (g) – *Operating Instructions*

Operating Instructions:

(Required by AD 2020-24-04)

When conducting an approach with a localizer-based navigation aid, monitor localizer raw data and call out any significant deviations. If AFDS performance is not satisfactory, the flight crew must intervene. Perform an immediate go-around if the airplane has not intercepted the final approach course as shown by the localizer deviation.

(h) Alternative Methods of Compliance (AMOCs)

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

AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make

those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: frank.carreras@faa.gov.

(j) Material Incorporated by Reference

None.

Issued on November 13, 2020.

Lance T. Gant,*Director, Compliance & Airworthiness
Division, Aircraft Certification Service.*

[FR Doc. 2020-26680 Filed 12-1-20; 11:15 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF HOMELAND
SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG-2020-0658]

**Drawbridge Operation Regulation;
Indian Creek, Miami Beach, FL****AGENCY:** Coast Guard, DHS.**ACTION:** Notification of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, Florida. A request was made to place the drawbridge on a weekend operating schedule to alleviate vehicle congestion due to on demand bridge openings. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding these proposed changes.

DATES: This deviation is effective from 12:01 a.m. on December 14, 2020, through 11:59 p.m. on June 11, 2021.

Comments and relate material must reach the Coast Guard on or before February 11, 2021.

ADDRESSES: You may submit comments identified by docket number USCG-2020-0658 using Federal eRulemaking Portal at <https://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305-535-4307, email Samuel.Rodriguez-Gonzalez@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Background, Purpose and Legal Basis**

The 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, Florida is a double-leaf bascule bridge with an 11 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.293. Navigation on the waterway is commercial and recreational.

A private citizen requested the Coast Guard consider placing the drawbridge on a weekend operating schedule to alleviate vehicle congestion due to on demand bridge openings. The Coast Guard contacted the bridge owner, Florida Department of Transportation (FDOT), and requested a copy of the bridge logs for the month of August 2020. After reviewing the logs, the Coast Guard determined placing the bridge on a schedule during the weekend may alleviate vehicle congestion while maintaining the reasonable needs of navigation. This test deviation provides for scheduled opening times on Saturdays and Sundays. There will be no change to the published weekday operating schedule.

Under this test deviation, from 7 a.m. to 7 p.m., the draw shall open on the hour and half-hour; except Federal Holidays and all other times, the draw shall operate on demand. From 7:10 a.m. to 9:55 a.m. and 4:05 p.m. to 6:59 p.m., Monday through Friday, except Federal Holidays, the draw need not open for the passage of vessels. In February of each year during the period seven days prior to the City of Miami Beach Yacht and Brokerage Show and the four days following the show, from 10 a.m. to 4 p.m., the bridge need not open except for 10 minutes at the top of the hour. At all other times the bridge shall operate on its normal schedule.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period.

Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking 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.

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 eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this notification as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Dated: November 23, 2020.

Randall D. Overton,*Director, Bridge Administration, Seventh
Coast Guard District.*

[FR Doc. 2020-26415 Filed 12-2-20; 8:45 am]

BILLING CODE 9110-04-P

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

[Docket Number USCG-2020-0641]

RIN 1625-AA08

**Safety Zone; Lower Mississippi River,
Natchez, MS****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River between Mile Marker (MM) 364.5 and MM 365.5. This action is necessary to provide for the safety of persons, vessels, and the marine environment during a fireworks display.

Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective from 4 p.m. through 7 p.m. on December 31, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2020–0641 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 MSTC Lindsey Swindle, Sector Lower Mississippi River, U.S. Coast Guard; telephone 901–521–4813, email Lindsey.M.Swindle@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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 is impracticable. We must establish this safety zone by December 31, 2020, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is necessary to protect persons and property from the potential hazards associated with the fireworks display.

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 Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with the fireworks display located at mile marker (MM) 365.0 on the Lower Mississippi River and scheduled for 4 p.m. on December 31, 2020, would be a safety concern for all persons and vessels on the Lower Mississippi River between MM 364.5 and MM 365.5 from 4 p.m. through 7 p.m. on December 31, 2020. Hazards associated with the firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is necessary to ensure the safety of persons, vessels, and the marine environment on these navigable waters before, during, and after the fireworks.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 4 p.m. through 7 p.m. on December 31, 2020. The safety zone will cover all navigable waters of the Lower Mississippi River from MM 364.5 to MM 365.5. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters before, during, and after the scheduled fireworks display.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 901–521–4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

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, and duration of the safety zone. Vessel traffic will be prohibited from entering this safety zone, which will impact a one-mile stretch of Lower Mississippi River for three hours on one evening. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule allows 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 that will prohibit entry on a one-mile stretch of the Lower Mississippi River for three hours on one evening. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of UDHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. 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.T08-0641 to read as follows:

§ 165.T08-0641 Safety Zone; Lower Mississippi River, Natchez, MS.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from Mile Marker (MM) 364.5 through MM 365.5.

(b) *Regulations.* (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 Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16 or by telephone at 901-521-4822. 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.

(c) *Enforcement period.* This section will be enforced 4 p.m. through 7 p.m. on December 31, 2020. Periods of activation will be promulgated by Broadcast Notice to Mariners.

Dated: November 2, 2020.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2020-26177 Filed 12-2-20; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0136; FRL-10016-79-Region 9]

Air Plan Partial Approval and Partial Disapproval; California; San Diego

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to partially approve and partially disapprove revisions to the San Diego Air Pollution Control District (SDAPCD or "District") portion of the California State Implementation Plan (SIP). These revisions concern the District's demonstration regarding reasonably available control technology (RACT) requirements and negative declarations for the 2008 ozone national ambient air quality standards (NAAQS or "standards") in the San Diego ozone nonattainment area under the jurisdiction of the SDAPCD.

DATES: This rule will be effective on January 4, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0136. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable

accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Nancy Levin, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3848 or by email at levin.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

I. Proposed Action

II. Public Comments and EPA Responses

III. EPA Action

IV. Statutory and Executive Order Reviews

I. Proposed Action

On August 10, 2020 (85 FR 48127), the EPA proposed to partially approve and partially disapprove the California Air Resources Board’s April 12, 2017 submittal of the 2008 Eight-Hour Ozone Reasonably Available Control Technology Demonstration for San Diego County (“2016 RACT SIP”).

TABLE 1—SUBMITTED DOCUMENT

Local agency	Document	Adopted	Submitted
SDAPCD	2008 Eight-Hour Ozone Reasonably Available Control Technology Demonstration for San Diego County (“2016 RACT SIP”).	12/14/16	4/12/2017

Our proposed action contains more information on the submittal and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received two comments. One comment was supportive, and the other was not germane.

III. EPA Action

No comments were submitted that change our assessment of the 2016 RACT SIP as described in our proposed action. Therefore, we are finalizing a partial approval and partial disapproval of the 2016 RACT SIP. As authorized in sections 110(k)(3) and 301(a) of the CAA, the EPA is finalizing a partial disapproval of the 2016 RACT SIP with respect to those portions addressing the following source categories: Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations (EPA-450/R-75-102); Tank Truck Gasoline Loading Terminals (EPA-450/2-77-026); Manufacture of Synthesized Pharmaceutical Products (EPA-450/2-78-029); Industrial Cleaning Solvents (EPA-453/R-06-001); Fiberglass Boat Manufacturing Materials (EPA-453/R-08-004); Non-CTG major sources of VOC; and Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003) Table 3—Plastic Parts and Products, Table 4—Automotive/Transportation and Business Machine Plastic Parts, Table 5—Pleasure Craft Surface Coating, and Table 6—Motor Vehicle Materials. As a result of the final partial disapproval, offset sanctions will be imposed unless the EPA approves a subsequent SIP revision that corrects the identified deficiencies

within 18 months of the effective date of this action. Highway sanctions will be imposed unless the EPA approves a subsequent SIP revision that corrects the rule deficiencies within 24 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA and 40 CFR 52.31. Additionally, section 110(c) requires the EPA to promulgate a Federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the rule deficiencies.

As authorized in sections 110(k)(3) and 301(a) of the CAA, the EPA is finalizing a partial approval of the 2016 RACT SIP with respect to all remaining source categories, as proposed. The EPA is also finalizing an approval of the District’s negative declarations as proposed.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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

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

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

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

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP partial approval and partial disapproval does not in-and-of itself create any new information collection burdens, but simply partially approves and partially disapproves certain State requirements for inclusion in the SIP.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP partial approval and partial disapproval does not in-and-of itself create any new requirements but simply partially approves and partially disapproves certain pre-existing State requirements for inclusion in the SIP.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action partially approves and partially disapproves pre-existing requirements under State or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and

responsibilities among the various levels of government.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is partially disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this SIP partial approval and partial disapproval does not in-and-of itself create any new regulations, but simply partially approves and partially disapproves certain pre-existing State requirements for inclusion in the SIP.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

L. Congressional Review Act (CRA)

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

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 10, 2020.

John Busterud,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(547) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(547) The following plan was submitted on April 12, 2017 by the Governor’s designee.

(i) [Reserved]

(ii) *Additional materials.* (A) San Diego Air Pollution Control District.

(1) 2008 Eight-Hour Ozone Reasonably Available Control Technology Demonstration for San Diego County except those portions addressing the following source categories: Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations (EPA–450/R–75–102); Tank Truck Gasoline Loading Terminals (EPA–450/2–77–026); Manufacture of Synthesized Pharmaceutical Products (EPA–450/2–78–029); Industrial Cleaning Solvents (EPA–453/R–06–001); Fiberglass Boat Manufacturing Materials (EPA–453/R–08–004); Non-CTG major sources of VOC; and Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003) Table 3—Plastic Parts and Products, Table 4—Automotive/Transportation and Business Machine Plastic Parts, Table 5—Pleasure Craft Surface Coating, and Table 6—Motor Vehicle Materials.

(2) [Reserved]

(B) [Reserved]

■ 3. Section 52.222 is amended by adding paragraph (a)(5)(ii) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(5) * * *

(ii) The following negative declarations for the 2008 ozone NAAQS were adopted by the San Diego Air Pollution Control District on December 14, 2016, and submitted to the EPA on April 12, 2017.

TABLE 4 TO PARAGRAPH (a)(5)(ii)—NEGATIVE DECLARATIONS FOR THE 2008 OZONE NAAQS

CTG document No.	CTG document title
EPA–450/2–77–008	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks (Automobiles, and light-duty truck coatings only).
EPA–450/2–77–025	Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
EPA–450/2–77–032	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture.

TABLE 4 TO PARAGRAPH (a)(5)(ii)—NEGATIVE DECLARATIONS FOR THE 2008 OZONE NAAQS—Continued

CTG document No.	CTG document title
EPA-450/2-77-033	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.
EPA-450/2-77-034	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances.
EPA-450/2-78-030	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.
EPA-450/2-78-032	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling.
EPA-450/2-78-036	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.
EPA-450/3-82-009	Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.
EPA-450/3-83-006	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA-450/3-83-007	Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.
EPA-450/3-83-008	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA-450/3-84-015	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA-450/4-91-031	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
EPA-453/R-97-004; 59 FR 29216 (6/6/94).	Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations; Aerospace MACT.
EPA-453/R-06-004	Control Techniques Guidelines for Flat Wood Paneling Coatings.
EPA-453/R-07-004	Control Techniques Guidelines for Large Appliance Coatings.
EPA-453/R-07-005	Control Techniques Guidelines for Metal Furniture Coatings.
EPA-453/R-08-006	Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings.

* * * * *

■ 4. Section 52.237 is amended by adding paragraph (b)(2) to read as follows:

§ 52.237 Part D disapproval.

(b) * * *

(2) San Diego Air Pollution Control District.

(i) RACT determinations for the following source categories in the submittal titled “2008 Eight-Hour Ozone Reasonably Available Control Technology Demonstration for San Diego County,” dated December 2016, as adopted December 14, 2016, and submitted on April 12, 2017.

(A) Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations (EPA-450/R-75-102).

(B) Tank Truck Gasoline Loading Terminals (EPA-450/2-77-026).

(C) Manufacture of Synthesized Pharmaceutical Products (EPA-450/2-78-029).

(D) Industrial Cleaning Solvents (EPA-453/R-06-001).

(E) Fiberglass Boat Manufacturing Materials (EPA-453/R-08-004).

(F) Non-CTG major sources of VOC.

(G) Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003) Table 3—Plastic Parts and Products, Table 4—Automotive/Transportation and Business Machine Plastic Parts, Table 5—Pleasure Craft Surface Coating, and Table 6—Motor Vehicle Materials.

(ii) [Reserved]

[FR Doc. 2020-26649 Filed 12-2-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2019-0461; FRL-10016-23]

Sethoxydim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sethoxydim in or on basil, dried leaves and basil, fresh leaves. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 3, 2020. Objections and requests for hearings must be received on or before February 1, 2021, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2019-0461, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

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), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDFFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2019-0461 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 1, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2019-0461, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is

available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 3, 2019 (84 FR 52850) (FRL-9999-89), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8769) by IR-4, IR-4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.412 be amended by establishing tolerances for residues of the herbicide sethoxydim, including its metabolites and degradates, determined by measuring only the sum of sethoxydim, 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (CAS Reg. No. 74051-80-2) and its metabolites containing the 2-cyclohexen-1-one moiety, calculated as the stoichiometric equivalent of sethoxydim, in or on basil, dried leaves at 20 parts per million (ppm) and basil, fresh leaves at 8 ppm. That document referenced a summary of the petition prepared by IR-4, the petitioner, which is available in the docket for this action, docket ID number EPA-HQ-OPP-2019-0461, at <http://www.regulations.gov>. No relevant comments were received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

A. Statutory Background

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the

available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sethoxydim and to make a determination on aggregate exposure for sethoxydim, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sethoxydim follows.

B. Sethoxydim Aggregate Risk Assessment

On June 15, 2015, EPA published in the **Federal Register** a final rule establishing tolerances for residues of sethoxydim in or on multiple commodities based on the Agency's conclusion that aggregate exposure to sethoxydim is safe for the general population, including infants and children. See 80 FR 34070 (FRL-9928-20) (Docket ID EPA-HQ-OPP-2014-0161). In an effort to streamline **Federal Register** publications, EPA is not reprinting here summaries of its analysis that have previously appeared in the **Federal Register** in tolerance rulemakings for the same pesticide. To that end, this rulemaking refers the reader to the following sections from the June 15, 2015 tolerance rulemaking for sethoxydim that remain unchanged for an understanding of the Agency's rationale in support of this rulemaking: Units III.A (Toxicological Profile); III.B. (Toxicological Points of Departure/ Levels of Concern); III.C. (Exposure Assessment), except as explained in the next paragraphs; III.D. (Safety Factor for Infants and Children); and IV.A (Analytical Enforcement Method).

1. **Updates to exposure assessment.** EPA's dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from the new use of sethoxydim on basil. In addition, the acute dietary exposure assessment was revised to: (1) Assume 100% crop treated, instead of using percent crop treated as described in the 2015 rule; and (2) incorporate empirical and/or EPA's 2018 default processing factors. The assumption of tolerance-level residues for both the acute and chronic dietary analyses has not changed. For the chronic dietary exposure assessment, EPA incorporated updated average crop treated estimates for select commodities and EPA's 2018 processing factors.

The new use on basil does not impact drinking water exposures; therefore, the Agency relied on the same values for drinking water exposures as expressed in the June 2015 rulemaking.

While EPA has updated the human equivalent doses for assessing

inhalation risk to residential handlers, this revision does not impact the approach of the aggregate assessment. The scenario and life stage resulting in the highest residential exposures for use in the aggregate assessment and which is considered protective of other exposure scenarios continues to be the post-application incidental oral hand-to-mouth exposure of children (1 to less than 2 years old) on treated turf. The new use on basil does not result in any additional residential exposures.

2. *Assessment of aggregate risks.* EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose and chronic population adjusted dose. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

Acute dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the acute population adjusted dose (aPAD): They are less than 12% of the aPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD): They are 24% of the cPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate.

For the aggregate risk assessment, exposures to sethoxydim in food and drinking water are combined with residential exposures for the relevant exposure duration period. Aggregate acute and chronic risk are equivalent to the dietary risks, which are below EPA's level of concern, because neither acute nor long-term residential exposures are expected.

The short-term aggregate risk assessment considers only residential incidental oral exposures and combines chronic (background) exposures with the expected short-term post-application exposures to children 1 to 2 years old. This yields an MOE of 4,400, which is not of concern because it exceeds EPA's level of concern (MOEs less than or equal to 100). Intermediate-term residential exposures are not expected.

Finally, as stated in the June 2015 rulemaking, sethoxydim is not expected to pose a cancer risk to humans.

C. Determination of Safety

Therefore, based on the risk assessments and information described and referenced above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to sethoxydim residues. More detailed information about the Agency's analysis can be found in "Sethoxydim: Human Health Risk Assessment to Support the Section 3 Use on Basil and a Label Amendment to Reduce the Pre-harvest Interval for Caneberry Subgroup 13-07A" dated October 21, 2020 in docket ID number EPA-HQ-OPP-2019-0461.

IV. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The Codex has not established a MRL for sethoxydim.

V. Conclusion

Therefore, tolerances are established for residues of sethoxydim, including its metabolites and degradates, determined by measuring only the sum of the herbicide 2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (CAS Reg. No. 74051-80-2) and its metabolites containing the 2-cyclohexen-1-one moiety, calculated as the stoichiometric equivalent of sethoxydim, in or on basil, dried leaves at 20 ppm and basil, fresh leaves at 8 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), nor is it considered a

regulatory action under Executive Order 13771, entitled "Reducing Regulations and Controlling Regulatory Costs" (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: November 5, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. In § 180.412, amend paragraph (a) by designating the table and adding in alphabetical order in newly designated Table 1 to paragraph (a) the entries “Basil, dried leaves” and “Basil, fresh leaves” to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Basil, dried leaves	20
Basil, fresh leaves	8
* * * * *	

[FR Doc. 2020–26014 Filed 12–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0569; FRL–10015–57]

Adipic Acid; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Adipic acid when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at an end-use concentration not to exceed 100 parts per million (ppm). Ecolab, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting establishment of an exemption from the requirement of a tolerance for adipic acid. This regulation eliminates the need to establish a maximum permissible level for residues of adipic acid when used in accordance with this exemption.

DATES: This regulation is effective December 3, 2020. Objections and requests for hearings must be received on or before February 1, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0569, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0569 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 1, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0569, by one of the following methods:

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Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

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- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Petition for Exemption

In the **Federal Register** of May 29, 2020 (85 FR 32338) (FRL–10009–84), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11317) by Ecolab, Inc., 655 Lone Oak Drive, Eagan, MN 55121. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of adipic acid when used as an inert ingredient at an upper limit of 100 ppm in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. That document referenced a summary of the petition prepared by Ecolab, Inc., the petitioner, which is available in the docket, <http://www.regulations.gov>. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit V.B.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term “inert” is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by adipic acid in these toxicity studies are discussed in this unit.

Available acute toxicity studies on adipic acid include various oral, dermal, and inhalation studies which showed low toxicity. Multiple dermal and eye irritation studies, and a dermal sensitization study, indicated that adipic acid is not a dermal irritant and does not cause skin sensitization. Adipic acid is an eye irritant. In available repeat dose studies, which were up to two years in duration, no adverse effects of treatment were seen below the limit dose of 1,000 mg/kg/day. In addition, there was no evidence of carcinogenicity or neuropathological changes or effects reported in any of the studies. Adipic acid was not found to be genotoxic in various *in vitro* and *in vivo* studies.

All studies showed low acute and repeat dose toxicity, and no reproductive/developmental toxicity was seen in any of the species tested. The primary systemic health effect associated with adipic acid is irritation of the intestinal mucosa and decreased body weight after exposures to concentrations >2,000 mg/kg/day.

B. Toxicological Points of Departure/Levels of Concern

No toxicological endpoint of concern for adipic acid has been identified in the database.

C. Exposure Assessment

1. *Dietary exposure from food, feed uses, and drinking water.* In evaluating dietary exposure to adipic acid, EPA considered exposure under the current and proposed use patterns. Dietary exposure to adipic acid may occur from eating foods containing adipic acid (found naturally or as a food additive) or eating food that comes in contact with surfaces treated with pesticide formulations containing this inert ingredient. In addition, exposure through drinking water is also possible. However, no toxicological endpoint of concern was identified for adipic acid below the limit dose and therefore a quantitative assessment of dietary exposure is not necessary.

2. *Non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, and tables). Residential exposure to adipic acid may occur based on its use as an inert ingredient in pesticide formulations registered for residential uses. Additional non-dietary exposure may occur from the use of adipic acid in pharmaceutical products and cosmetics. However, no toxicological endpoint of concern was identified below the limit dose for adipic acid and therefore a quantitative residential exposure assessment for adipic acid was not conducted.

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

EPA has not found adipic acid to share a common mechanism of toxicity with any other substances, and adipic acid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has assumed that adipic acid does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of the FFDCA requires EPA to apply an additional tenfold margin of safety in the case of threshold effects to ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. As noted in Unit IV.B., there is no indication of threshold effects being caused by adipic acid. Therefore, this requirement does not apply to the present analysis. Moreover, due to the lack of any toxicological endpoints of concern, EPA conducted a qualitative assessment of adipic acid, which does not use safety factors for assessing risk.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on adipic acid, EPA has determined that there is a reasonable certainty that no harm to the general population or any population subgroup, including infants and children, will result from aggregate exposure to adipic acid residues. Therefore, the establishment of an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of adipic acid when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum end-use concentration of 100 ppm, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of adipic acid in or on any food commodities. EPA is establishing a limitation on the amount of adipic acid that may be used in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. 136 *et seq.* EPA will not register any antimicrobial pesticide formulation applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils pesticide formulation that exceeds an end-use concentration of adipic acid of 100 ppm.

B. Response to Comments

One comment was received in response to the notice of filing associated with this action; however, the comment was unrelated to adipic acid and is not relevant to this action.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for residues of adipic acid (CAS Reg. No. 124–04–9) when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at an end-use concentration not to exceed 100 ppm.

VII. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and

Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: November 6, 2020.

Marietta Echeverria,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. In § 180.940 amend the table in paragraph (a) by adding alphabetically the entry “Adipic acid” to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * *	* * *
Adipic acid	124-04-9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *

* * * * *

[FR Doc. 2020-26005 Filed 12-2-20; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19-250, RM-11849; FCC 20-153; FRS 17230]

Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission revises portions of the Spectrum Act of 2012 to provide for streamlined state and local government review of modifications to existing wireless infrastructure that involve limited ground excavation or deployment of transmission equipment. The *Report and Order* promotes accelerated deployment of 5G and other advanced wireless services by facilitating the collocation of antennas and associated equipment on existing infrastructure while preserving the

ability of state and local governments to manage and protect local land-use interests.

DATES: Effective January 4, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Georgios Leris, Georgios.Leris@fcc.gov or Belinda Nixon, Belinda.Nixon@fcc.gov, Competition & Infrastructure Policy Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Report and Order* in WT Docket No. 19-250, RM-11849; FCC 20-153, adopted on October 27, 2020, and released on November 3, 2020. The full text of this document is available for public inspection online at <https://www.fcc.gov/edocs>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.), and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Synopsis

1. In this *Report and Order*, the Commission revises its rule to provide for streamlined state and local review of modifications that involve limited ground excavation or deployment while preserving the ability of state and local governments to manage and protect local land-use interests. To facilitate the collocation of antennas and associated ground equipment, while recognizing the role of state and local governments in land use decisions, the Commission revises section 6409(a) rules to provide that excavation or deployment in a limited area beyond site boundaries would not disqualify the modification of an existing tower from streamlined state and local review on that basis.

2. This change is consistent with the recent amendment to the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas (Collocation NPA), which now provides that, in certain circumstances, excavation or deployment within the same limited area beyond a site boundary does not warrant federal historic preservation review of a collocation. In addition, we revise the definition of “site” in section 6409(a) rules in a manner that will ensure that the site boundaries from which limited expansion is measured appropriately

reflect prior state or local government review and approval. The Commission's actions in this document carefully balance the acceleration of the deployment of advanced wireless services, particularly through the use of existing infrastructure where efficient to do so, with the preservation of states' and localities' ability to manage and protect local land-use interests.

3. To advance "Congress's goal of facilitating rapid deployment [of wireless broadband service]" and to provide clarity to the industry, the Commission in 2014 adopted rules to implement section 6409(a) of the Spectrum Act of 2012 (80 FR 1237, January 8, 2015). Section 6409(a) provides, in relevant part, that "[n]otwithstanding [47 U.S.C. 332(c)(7)] or any other provision of law, a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Among other matters, the 2014 Infrastructure Order established a 60-day period in which a state or local government must approve an "eligible facilities request." (80 FR 1267, January 8, 2015). The Commission's rules define "eligible facilities request" as "any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment." (80 FR 1252).

4. The 2014 Infrastructure Order adopted objective standards for determining when a proposed modification would "substantially change the physical dimensions" of an existing tower or base station. Among other standards, the Commission determined "that a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station." (80 FR 1254). The Commission defined "site" for towers not located in the public rights-of-way as "the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site," (80 FR 1255) and it defined "site" for other eligible support structures as being "further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground." (Ibid).

5. In adopting the standard for excavation and deployment that would be considered a substantial change

under section 6409(a), the Commission looked to analogous concerns about impacts on historic properties reflected in implementation of the National Historic Preservation Act and primarily relied on similar language in the Collocation NPA. At that time, the Commission considered, but declined to adopt, a proposal to exclude from the scope of "substantial change" any excavation or deployment of up to 30 feet in any direction of a site, a proposal that was consistent with an exclusion from section 106 review for replacement towers in the Wireless Facilities NPA. In reconciling different standards for potentially analogous deployments in the NPAs, the Commission reasoned that the activities covered under section 6409(a) "are more nearly analogous to those covered under the Collocation [NPA] than under the replacement towers exclusion in the [Wireless Facilities] NPA," but the Commission did not explore the reasoning for the discrepancy between the NPAs, nor did it further explain why it chose to borrow from the older NPA instead of the more modern one. In addition, the Commission did not make a determination that it would be unreasonable to use 30 feet as a touchstone for defining what types of excavations would "substantially change the physical dimensions of [an existing] tower or base station." Rather, the Commission established a reasonable, objective, and concrete set of criteria to eliminate the need for protracted local zoning review, in furtherance of the goals of the statute, by drawing guidance from the consensus represented by the approach taken in the Collocation NPA. That same Collocation NPA, however, was recently amended to reflect an updated consensus on what might be best regarded as a substantial increase in the size of an existing tower, as it excludes a collocation from section 106 review if it involves excavation within 30 feet outside the boundaries of the tower site.

6. On August 27, 2019, the Wireless Infrastructure Association (WIA) filed a Petition for Declaratory Ruling (84 FR 50810, September 26, 2019) requesting that the Commission clarify that, for towers other than towers in the public rights-of-way, the "current site" for purposes of § 1.6100(b)(7)(iv) is the property leased or owned by the applicant at the time it submits a section 6409(a) application and not the initial site boundaries. On the same day, WIA also filed a Petition for Rulemaking (Ibid) requesting that the Commission amend its rules to establish that a modification would not cause a

"substantial change" if it entails excavation or deployments at locations of up to 30 feet in any direction outside the boundaries of a tower compound.

7. On June 10, 2020, the Commission adopted a *Notice of Proposed Rulemaking (NPRM)* that sought comment on two issues regarding the scope of the streamlined application process under section 6409(a): (i) The definition of "site" under § 1.6100(b)(6); and (ii) the scope of modifications under § 1.6100(b)(7)(iv). (85 FR 39859, July 2, 2020). The Commission proposed to revise the definition of site "to make clear that 'site' refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that the facility was last reviewed and approved by a locality." The Commission also proposed "to amend § 1.6100(b)(7)(iv) so that modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility's site will be eligible for streamlined processing under section 6409(a)." The *NPRM* asked, in the alternative, whether the Commission "should revise the definition of site in § 1.6100(b)(6), as proposed above, without making the proposed change to § 1.6100(b)(7)(iv) for excavation or deployment of up to 30 feet outside the site." In addition, the *NPRM* asked "whether to define site in § 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*." Finally, the *NPRM* asked about alternatives to the proposals, costs, and benefits.

8. After reviewing the record in this proceeding, the Commission makes targeted revisions to § 1.6100(b)(7)(iv) and (b)(6) of its rules to broaden the scope of wireless facility modifications that are eligible for streamlined review under section 6409(a). The Commission has considered collocation a tool for advancing wireless services' deployment for over three decades. As the Commission noted in the 2014 Infrastructure Order, collocation "is often the most efficient and economical solution for mobile wireless service providers that need new cell sites to expand their existing coverage area, increase their capacity, or deploy new advanced services." The actions the Commission takes in this document will further streamline the approval process for using existing infrastructure to expedite wireless connectivity efforts nationwide while preserving localities' ability to manage local zoning.

9. First, the Commission amends § 1.6100(b)(7)(iv) to provide that, for towers not located in the public rights-of-way, a modification of an existing site that entails ground excavation or deployment of transmission equipment of up to 30 feet in any direction outside a tower's site will not be disqualified from streamlined processing under section 6409(a) on that basis. In general, § 1.6100(b)(7) describes when an eligible facilities request will "substantially change the physical dimensions" of a facility under section 6409(a). Because the statutory term "substantially change" is ambiguous, § 1.6100(b)(7) elaborates on the phrase by providing numerical and objective criteria for determining when a proposed expansion will "substantially change" the dimensions of a facility. For the reasons explained more fully below, the Commission concludes that proposed ground excavation or deployment of up to 30 feet in any direction outside a tower's site is sufficiently modest so as not to "substantially change the physical dimensions" of a tower or base station, and that this amendment to the Commission's rules thus represents a permissible construction of section 6409(a).

10. In promulgating the initial rules to implement section 6409(a), the Commission determined that "an objective definition" of what constitutes a substantial change "will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities." With respect to excavation and deployment in association with modifications to existing structures, the Commission found that the appropriate standard for what constitutes a substantial change was any excavation or deployment outside of the site boundaries. Here, the Commission concludes that a revision to this standard is warranted by certain changes since its initial determination: The recent recognition by the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers of 30 feet as an appropriate threshold in the context of federal historic preservation review of collocations; and the ongoing evolution of wireless networks that rely on an increasing number of collocations, where they are an efficient alternative to new tower construction, to meet the rising demand for advanced wireless services. In light of these changes, the Commission concludes that it is reasonable to adjust the line drawn by the Commission in 2014 for streamlined treatment of excavations or deployments associated with collocations, and in

doing so the Commission continues to believe that it is appropriate to consider in this context the analogous line drawn in the federal historic preservation context as a relevant benchmark.

11. As an initial matter, the Commission recognizes that it relied on the Wireless Facilities NPA and Collocation NPA to inform its adoption of initial rules implementing section 6409(a). In particular, the Commission stated that "the objective test for 'substantial increase in size' under the Collocation [NPA] should inform its consideration of the factors to consider when assessing a 'substantial change in physical dimensions,'" and that this approach "reflects the Commission's general determination that definitions in the Collocation [NPA] and [Wireless Facilities] NPA should inform the Commission's interpretation of similar terms in [section 6409(a)]." With respect to excavation and deployment associated with a modification of an existing structure, the Commission relied on a provision in the Collocation NPA and determined that "a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station." Further, the Commission considered, but declined to adopt, a proposal to exclude from the scope of "substantial change" any excavation or deployment of up to 30 feet in any direction from a site's boundaries, which would have been consistent with an exclusion from section 106 review for replacement towers in the Wireless Facilities NPA. Importantly, the Commission did not characterize the 30-foot standard in the Wireless Facilities NPA to be an unreasonable choice. The Commission elected to follow the language in the Collocation NPA given commonalities between the types of deployments referred to in section 6409 and the types of deployments covered under the Collocation NPA, as well as input from industry and localities.

12. The Collocation NPA was recently amended, however, to align with the Wireless Facilities NPA, reflecting a recognition that, in the context of federal historic preservation review, permitting a limited expansion beyond the site boundaries to proceed without substantial review encourages collocations without significantly affecting historic preservation interests. Specifically, on July 10, 2020, the Wireless Telecommunications Bureau Chief (on delegated authority from the Commission), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers executed the Amended Collocation NPA to eliminate

an inconsistency between the Collocation NPA and the Wireless Facilities NPA (85 FR 51357, August 20, 2020).

13. The Amended Collocation NPA now provides that, for the purpose of determining whether a collocation may be excluded from section 106 review, a collocation is a substantial increase in the size of the tower if it "would expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries." In adopting that change, the Amended Collocation NPA stated that, among other reasons, the parties "developed this second amendment to the Collocation Agreement to allow project proponents the same review efficiency [applicable to tower replacements in the Wireless Facilities NPA] in regard to limited excavation beyond the tower site boundaries for collocation, thereby encouraging project proponents to conduct more collocation activities instead of constructing new towers" The parties therefore recognized the limited effect that an up to 30-foot compound expansion would impose on the site, which is also consistent with the Commission's rationale in adopting the replacement tower exclusion in the Wireless Facilities NPA. Indeed, in the 2004 Report and Order (70 FR 556, January 4, 2005) implementing the Wireless Facilities NPA, the Commission concluded that a 30-foot standard was "reasonable and appropriate," and reasoned that "construction and excavation to within 30 feet of the existing leased or owned property means that only a minimal amount of previously undisturbed ground, if any, would be turned, and that would be very close to the existing construction." The Commission's decision to permit an eligible facilities request to include limited excavation and deployment of up to 30 feet in any direction harmonizes its rules under section 6409(a) with permitted compound expansions for exclusion from section 106 review for replacement towers under the Wireless Facilities NPA and collocations under the Collocation NPA.

14. In that regard, the Commission disagrees with the localities' argument that the Collocation NPA "has no bearing on [this] matter." The definition of "substantial increase in size of the tower" in the Collocation NPA was a primary basis for the Commission's decision in the 2014 Infrastructure Order to define a substantial change as any excavation or deployment outside the boundaries of a tower site. Accordingly, the amendment to the

Collocation NPA to provide that excavations of up to 30 feet of the boundaries of a site is not a substantial increase in size provides support for the Commission's decision in this *Report and Order* to once again make the section 6409(a) rules consistent with the Collocation NPA. Retaining the existing definition despite the amendment to the Collocation NPA could create confusion and invite uncertainty.

15. In addition, the Commission finds that the revised 30-foot standard is supported by the current trends toward collocations and technological changes that the record evidences while preserving localities' zoning authority. Collocations necessarily include installing transmission equipment that supports the tower antenna on a site. Industry commenters claim that "[t]he majority of existing towers were built many years ago and were intended to support the operations of a single carrier." Following the 2014 Infrastructure Order's promotion of collocations, more towers now house several operators' antennas and other transmission equipment, and industry commenters assert that, in many cases, any space that was once available at those tower sites has been used. As a result, there is less space at tower sites for additional collocations without minor modifications to sites to accommodate the expansion of equipment serving existing operators at the sites and the addition of new equipment serving new operators at the sites. As NTCA states, "[l]ike other wireless providers, NTCA members often find that collocations on towers require the additional installation of . . . facilities necessary to support transmission equipment. This has become increasingly difficult as towers built to hold one carrier's facilities may be used to support those utilized by multiple wireless providers." Further, additional space is generally necessary to add the latest technologies enabling 5G services, such as multi-access edge computing, which requires more space than other collocation infrastructure. Given the need for more space on the ground to accommodate a growing number of facility modifications, the Commission finds that streamlined treatment of limited compound expansions is essential to achieve the degree of accelerated advanced wireless network deployment that will best serve the public interest. Indeed, WIA states that the 30-foot standard "appropriately provides a reasonable and realistic degree of flexibility." Further, in light of these developments and the recognition of a new compound expansion standard

in the context of historic preservation review of collocations, the Commission finds it reasonable to adjust the line drawn by the Commission in 2014 for determining whether limited compound expansion is a substantial change that disqualifies a modification from eligibility for streamlined treatment.

16. The Commission also finds that streamlined treatment of limited compound expansions will promote public safety and network resiliency. For example, the Commission notes that Crown Castle states that more than 40 percent of its site expansions in the past 18 months were solely for "adding backup emergency generators to add resiliency to the network." And WIA states that, "in many cases, the need for a limited expansion of the compound is being driven by public safety demands and the desire to improve network resiliency." The Commission's rule change will also promote public safety in another context—industry commenters state that the proposed rule changes will ensure expeditious and effective deployment of FirstNet's network, which Congress directed to leverage collocation on existing infrastructure "to the maximum extent economically desirable." AT&T, for example, states that "many collocations on existing towers being performed to build a public safety broadband network for [FirstNet] entail site expansions to add generators as well as Band 14 equipment." The Commission therefore agrees with commenters that these changes will promote public safety.

17. The Commission concludes that 30 feet is an appropriate threshold. The objective standard the Commission adopts in this document is consistent with the current collocation marketplace and with the threshold adopted in the Wireless Facilities NPA and recently included in the Amended Collocation NPA. In affirming the 2014 Infrastructure Order, the Fourth Circuit stated that the order "provide[d] objective and numerical standards to establish when an eligible facilities request would 'substantially change the physical dimensions' " of a site. (*Montgomery County, Md. v. FCC*, 811 F.3d at 130; *see also id.* at 131 n.8). Here, the Commission extends those objective and numerical standards in a manner that reflects the recent recognition of 30 feet as an appropriate standard in the federal historic preservation context and the changes in the collocation marketplace, which is lacking space for collocations.

18. The Commission believes that its actions in this document, which reflect the Amended Collocation NPA and collocation marketplace changes since

the Commission's determination in 2014, "will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities." Indeed, the record reflects that the deployment of transmission equipment within the expanded 30-foot area will be limited, buttressing the Commission's view that 30 feet is a reasonable limit to expansion that does not constitute a substantial change and therefore should be subject to streamlined review under section 6409 and the Commission's implementing regulations. Crown Castle states that the 30-foot standard "will be sufficient to accommodate the types of minor equipment additions that Crown Castle must often make as part of a collocation or other site modification." Crown Castle presents several representative examples of proposed minor site expansions, which include "additional equipment, equipment upgrades, new collocations, and back-up generator installations." These examples demonstrate that compound expansions occur as close to the tower as possible, as "customers typically require their equipment to be in close proximity to the tower, their other equipment, power sources, available fiber, and any back-up power supply." These examples also demonstrate that construction within a 30-foot perimeter of an existing site would not result in what could be considered substantial changes to the physical footprint of existing sites, especially when considered in conjunction with other limitations in the Commission's rules that it is not altering.

19. Localities generally oppose any revision to the Commission's existing "substantial change" definition that would enable streamlined treatment of modifications involving compound expansion outside of a site,¹ but request

¹ To the extent that the localities' opposition to our decision rests on the notion that an expansion is only permitted if it involves deployment on the existing tower as opposed to within the site around the tower, we reject that argument. The 2014 rules already permit streamlined treatment of deployments around the tower as long as such deployments stay within the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. *See, e.g.*, 2014 Infrastructure Order, 29 FCC Rcd at 12949, para. 198; 47 CFR 1.6100(b)(6). As discussed below, the permissible modifications under our new rules would relate only to equipment that "facilitates transmission for any Commission-licensed or authorized wireless communication service" from the existing tower, consistent with the statute and definitions in § 1.6100. *See* 47 CFR 1.6100(b)(8) (defining "transmission equipment"). Accordingly, the deployment of such equipment would clearly impact the equipment touching that structure. It is thus more than reasonable for the Commission to rely on its statutory authority to classify such

that, if such changes nonetheless are made, they should be limited in certain ways. First, the National Association of Telecommunication Officers and Advisors (NATOA) and Local Governments express concern that the rule change with respect to compound expansion could be interpreted to permit the deployment of new towers within the expanded area, and they request that the Commission limit the permissible deployment within the expanded area to transmission equipment. The Commission agrees that the deployments referenced in § 1.6100(b)(7)(iv) are deployments of transmission equipment. Under the Commission's current rules, any eligible facilities request—a request that is eligible for section 6409(a) treatment—must involve the collocation, replacement, or removal of transmission equipment. Accordingly, any deployment outside the site boundary that is eligible for section 6409(a) treatment under § 1.6100(b)(7)(iv), including deployments within 30 feet of the site boundary for a tower outside the public rights-of-way, would be limited to the deployment of transmission equipment, not new towers.

20. Second, NATOA and Local Governments propose that the site boundary from which a compound expansion will be measured should exclude easements related to that site. The Commission agrees. The definition of “site” in the Commission's current rules, for towers other than towers in the public rights-of-way, is “the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.” The Commission finds, though, that providing a 30-foot expansion for excavation or deployment along an easement related to the site is not necessary to meet the goal of facilitating wireless infrastructure deployment, because it is more likely that additional equipment will need to be placed in a limited area outside the leased or owned property rather than outside the easement related to the site. Further, excavation or deployment in an area 30 feet outside an easement, which could be miles in length, could result in a substantial change that would not be entitled to streamlined treatment under section 6409(a).

21. Third, NATOA and Local Governments request that the Commission restrict the size of transmission equipment deployed outside the site. The Commission finds

that, given the limited types of transmission equipment deployed for collocations, such a restriction is not necessary to consider excavation or deployment within the 30-foot expansion area to be outside the scope of a substantial change. Additionally, size restrictions based on current equipment may unnecessarily restrict the deployment of future technology, which may include larger transmission equipment than currently deployed or available. Finally, the other substantial change limitations in § 1.6100(b)(7) continue to apply to modifications under section 6409(a).

22. Fourth, NATOA and Local Governments assert that setting a 30-foot limit on excavation or deployment outside site boundaries, without regard to the size of the existing tower site, could permit substantial changes to qualify for streamlined treatment. In particular, NATOA and Local Governments propose that, to the extent the Commission revises its “substantial change” definition, the compound expansion standard should be “the lesser of the following distance[s] from the current site (not including easements related to the site): a. 20% of the length or width of the current site measured as a longitudinal or latitudinal line from the current site to the excavation or deployment; or b. 30 feet.” The Commission declines to adopt this proposal because, on balance, the potential problems it could create outweigh the potential benefits it could achieve. A standard of “20% of the length or width of the current site” would be difficult to administer, given that a site boundary is not necessarily a symmetrical shape. In addition, while the record supports the determination that a 30-foot expansion would be sufficient to accommodate minor equipment additions, the record does not provide support for the determination that the “20%” standard would accomplish this goal. Moreover, adopting the “20%” proposal would provide limited additional benefit in addressing the concern raised by NATOA and Local Governments. Because a small tower site typically is associated with a small tower that has limited space for additional antennas, it is unlikely that operators would need to place a significant amount of additional qualifying transmission equipment in an area outside the site boundaries. In addition, any modification to an existing tower that involves excavation or deployment within the 30-foot expanded area will be subject to the other criteria in the Commission's rules for determining whether there is a

substantial change that does not warrant streamlined treatment under section 6409(a). Those criteria, which the Commission does not alter in this document, provide further limitation on the size or scope of a modification that involves excavation or deployment within 30 feet of the site boundaries. For example, those criteria limit the modifications that would qualify for streamlined treatment by the number of additional equipment cabinets and by the increase in height and girth of the tower.

23. The Commission's limited adjustment to the definition of substantial change in the context of excavations or deployments is further supported by land-use laws in several states. In particular, the Commission observes that at least “eight states have passed laws that expressly permit compound expansion within certain limits . . . under an exempt or expedited review process.” Most of these laws allow expansion beyond 30 feet from the approved site. As Crown Castle states, “these state laws are a benefit to both the wireless industry and local officials. They permit the wireless industry to meet the burgeoning network demands while also providing certainty and clarity to all involved.”

24. The Commission finds that the standard it adopted in this document continues to be a reasonable line drawing exercise in defining “substantial change,” and it reflects a more appropriate balancing of the promotion of “rapid wireless facility deployment and preserving states’ and localities’ ability to manage and protect local land-use interests” than the Commission articulated in 2014. In that regard, the Commission finds that it is in the public interest to modify its prior decision on what constitutes substantial change within the context of excavation or deployment.

25. In addition to amending § 1.6100(b)(7)(iv), the Commission revises § 1.6100(b)(6) of the Commission's rules to define the current boundaries of the “site” of a tower outside of public rights-of-way in a manner relative to the prior approval required by the state or local government. In conjunction with § 1.6100(b)(7), § 1.6100(b)(6) informs when excavation or deployment associated with a modification will “substantially change the physical dimensions” of a facility under section 6409(a). While the word “site” does not itself appear in section 6409, § 1.6100(b)(7)(iv) uses the term in describing when excavation or deployment might be so distant from an existing structure that such

deployment as a modification of that tower and to expand the surrounding area to accommodate such deployment.

modifications would “substantially change the physical dimensions” of the facility. In amending its current definition, the Commission supplies a temporal baseline against which to measure whether a proposed modification would “substantially” change the facility. For the reasons explained more fully below, the Commission thinks that this amendment represents a reasonable construction of the ambiguous statutory language; ascertaining whether a modification “substantially changes” an existing structure requires establishing a baseline against which to measure the proposed change. Here, because the statutory language involves streamlined approval of modifications to existing facilities, it is reasonable, based on the statutory language, to measure the boundaries of a site by reference to when a state or local government last had the opportunity to review or approve the structure that the applicant seeks to modify, if such approval occurred prior to section 6409(a) or otherwise outside of the section 6409(a) process. After all, the objective of the statute is to streamline approval of additions to structures that were already approved.

26. Because the Commission’s actions in this document permit streamlined processing for modifications that entail ground excavation or deployment up to 30 feet outside a current site, it finds it necessary to clarify and provide greater certainty to applicants and localities about the appropriate temporal baseline for evaluating changes to a site. While the Commission did not have reason to elaborate on the meaning of a current site in the 2014 Infrastructure Order, because it defined any excavation or deployment outside a site as a substantial change, the Commission did establish other temporal reference points for evaluating other substantial change criteria, including height increases and concealment elements. The Commission therefore bases its revision to the definition of “site” on the terminology and reasoning articulated by the Commission in those related contexts, which have been upheld as a permissible construction of an ambiguous statutory provision.

27. Specifically, in the 2014 Infrastructure Order, the Commission found that, in the context of height increases, “whether a modification constitutes a substantial change must be determined by measuring the change in height from the dimensions of the ‘tower or base station’ as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to

the passage of the Spectrum Act, whichever is greater.” In adopting that standard, the Commission noted that “since the Spectrum Act became law, approval of covered requests has been mandatory and therefore, approved changes after that time may not establish an appropriate baseline because they may not reflect a siting authority’s judgment that the modified structure is consistent with local land use values.” Similarly, in the Commission’s recent Declaratory Ruling (85 FR 45126, July 27, 2020), it clarified that “existing” concealment elements “must have been part of the facility that was considered by the locality at the original approval of the tower or at the modification to the original tower, if the approval of the modification occurred prior to the Spectrum Act or lawfully outside of the section 6409(a) process (for instance, an approval for a modification that did not qualify for streamlined section 6409(a) treatment).”

28. The Commission finds that it is in the public interest to use similar text and reasoning in adopting the revised definition of “site” in this *Report and Order*. Here, the Commission similarly defines what would constitute a substantial change to infrastructure that was previously approved by localities under applicable local law—in this case, in the context of excavation or deployment relative to the boundaries of a site. The Commission revises the definition of “site” to provide that the current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process. Localities assert that the definition of “site” should ensure that the “facility was last reviewed and approved by a locality with full discretion” and not as an eligible facilities request. The Commission agrees with commenters that a site’s boundaries should not be measured—for purposes of setting the 30-foot distance in a request for modification under section 6409(a)—from the expanded boundary points that were established by any approvals granted or deemed granted pursuant to an “eligible facilities request” under section 6409(a). The Commission does not agree, however, with localities’ framing of the definition of “site” in terms of the broad concept of discretion. First, a standard that relies on whether the locality has “full discretion” to make a decision would create

uncertainty in determining whether a particular approval meets that standard. Second, non-discretionary approvals could include instances where a locality’s review is limited by state law rather than by section 6409(a), and the Commission does not find it appropriate for it to engage in line drawing under section 6409(a) based on potential interaction between state and local law.

29. The Commission declines to adopt the industry’s “hybrid” definition of “site.” Specifically, Crown Castle claims that the industry has interpreted and relied on the definition of “site” to mean the boundaries of the leased or owned property as of the date an applicant files an application with the locality. The industry therefore proposes a hybrid approach, which urges us to define site as of “the later of (a) [the date that the Commission issues a new rule under the *NPRM*]; or (b) the date of the last review and approval related to said tower by a state or local government issued outside of the framework of 47 U.S.C. 1455(a) and these regulations promulgated thereunder.” Adopting that proposal would risk permitting a tower owner to file an eligible facilities request even if it may have substantially increased the size of a tower site prior to the adoption of this *Report and Order* and without any necessary approval from a locality. Indeed, several localities caution against the industry’s proposal. They raise concerns that adopting the industry’s proposed definition would create “unending accretion of [a] site by repeated applications for expansion.” The Commission shares those concerns, and finds that its revision addresses them by ensuring that a locality has reviewed and approved the eligible support structure that is the subject of the eligible facilities request outside of the section 6409(a) process, while recognizing that the boundaries may have changed since the locality initially approved the eligible support structure. Further, the Commission maintains the 2014 Infrastructure Order’s approach that a locality “is not obligated to grant a collocation application under [s]ection 6409(a)” if “a tower or base station was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative State or local regulatory approval[.]”

30. Crown Castle also proposes that, to the extent that the Commission revises the definition of “site” as proposed in the *NPRM*, it should revise the language to provide that the site boundaries are determined as of the date a locality “last reviewed and issued a

permit,” rather than as of the date the locality last reviewed and approved the site. Crown Castle claims that, contrary to an approval, a “permit . . . applies to a wide variety of processes, and represents a tangible and unambiguous event[.]” The Commission declines to adopt Crown Castle’s proposal, as the mere issuance of a permit (e.g., an electrical permit) does not necessarily involve a locality’s review of the eligible support structure, and thus would not necessarily provide an opportunity for the locality to take into account an increase in the size of the site associated with that structure.²

31. Accordingly, the Commission revises § 1.6100(b)(6) to read as set out in the regulatory text below.

32. The Commission emphasizes that its revisions to the compound expansion provision in § 1.6100(b)(7)(iv) and to the definition of “site” in § 1.6100(b)(6) do not apply to towers in the public rights-of-way. The 2014 Infrastructure Order provided for streamlined review in more narrowly targeted circumstances with respect to towers in the public rights-of-way, and the Commission leaves those distinctions unchanged. The Commission has recognized that activities in public rights-of-way “are more likely to raise aesthetic, safety, and other issues,” and that “towers in the public rights-of-way should be subject to the more restrictive . . . criteria applicable to non-tower structures rather than the criteria applicable to other towers.” The record reflects agreement by both industry and locality commenters that the Commission’s rule change to provide for compound expansion should not apply to towers in the public rights-of-way. The Commission’s revised compound expansion rule also does not apply to non-tower structures (e.g., base stations), which “use very different support structures and equipment configurations” than towers.

33. The Commission also emphasizes that its actions here are not intended to affect any setback requirements that may apply to a site, and that it preserves localities’ authority to impose requirements on local-government property. Further, the expansion of up to 30 feet in any direction is subject to any land-use requirements or permissions that a local authority may

have imposed or granted within the allowed expansion (e.g., storm drain easement) at the time of the last review by a locality. The Commission also clarifies that the revised definition of “site” does not restrict a locality from issuing building permits (e.g., electrical) or approving easements within the expanded boundaries (e.g., a sewer or storm drain easement; a road; or a bike path). The Commission further clarifies, however, that changes in zoning regulations since the last local government review would not disqualify from section 6409(a) treatment those compound expansions that otherwise would be permitted under its revisions.

34. While localities raise health and safety concerns with modifying the scope of substantial change, the Commission observes that the modifications it makes in this document do not affect localities’ ability to address those concerns. The Commission previously has clarified that neither the statute nor its rules preempt localities’ health and safety requirements or their procedures for reviewing and enforcing compliance with such requirements, and the Commission reaffirms this conclusion in this document. The Commission emphasizes that section 6409(a) “does not preclude States and localities from continuing to require compliance with generally applicable health and safety requirements on the placement and operation of backup power sources, including noise control ordinances if any.” The Commission finds that its revision strikes the appropriate balance between promoting rapid wireless facility deployment while preserving localities’ local-use authority.

35. Finally, the Commission disagrees with the contentions of some localities that it lacks the legal authority to adopt some or all of the rule changes that it promulgates in this document, or that the Administrative Procedure Act otherwise precludes such action. Localities allege several infirmities. First, Virginia Localities argue that Congress limited the Commission’s authority to changes to the dimensions of towers and base stations only, and not to the underlying site. The Commission disagrees with that artificial distinction. A tower cannot exist without a site. And “[t]here is no question that [certain] terms of the Spectrum Act . . . are ambiguous,” including what constitutes substantial change to a site. (*Montgomery County, Md. v. FCC*, 811 F.3d at 129; *id.* at 130). The Fourth Circuit determined that the Commission can “establish[] objective criteria for determining when a

proposed modification ‘substantially changes the physical dimensions’” of an eligible support structure. (*Id.* at 129 n.5). The *Report and Order*’s revisions to the terms “site” and “substantial change” ensure that wireless deployments will continue while preserving localities’ site review and approval process.

36. Second, some localities argue that the Commission failed to provide the specific rule language in the *NPRM* and that the *NPRM* contains several ambiguities. Virginia Localities claim that it would be “very difficult to assess the potential practical effects of the proposed amendment to the EFR Rule without language to evaluate.” Local Governments claim that, among other issues, the *NPRM* is ambiguous on the operative date of the approval, the operative boundaries of the proposed expansion, and whether the definition of “site” will provide for other eligible support structures. Western Communities Coalition claims that the *NPRM* “appears to suggest that various rule changes might be limited to ‘macro tower compounds.’”

37. These arguments lack merit. The APA requires that an agency’s notice of proposed rulemaking must include “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” The D.C. Circuit has held that a notice of proposed rulemaking meets the requirements of administrative law if it “provide[s] sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.” (*Honeywell International, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004) (internal quotation marks omitted)). The *NPRM* in this proceeding did just that. Not only did the Commission include the substance of the proposed rule and describe the subjects and issues involved, it also clearly proposed specific language for the definition of “site” and the revision to “substantial change,” and it offered specific alternatives and sought comment on other possible options. The actions the Commission takes in this document reflect commenters’ responses to the *NPRM*. For example, in response to the Commission’s proposed definition of “site,” it establishes site boundaries as those that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process. Furthermore, various changes the Commission is making to the

² Crown Castle’s proposal would also introduce more uncertainty than it purports to cure. A locality may issue building, electrical, or other permits for a site without reviewing the eligible support structure on that site. A permit may therefore not constitute a “proper review” of a site. Review and approval of the eligible support structure, on the other hand, provides an opportunity for the locality to take into account an increase in the size of the site.

proposed language are reasonably foreseeable modifications designed to prevent any confusion that the proposed language might have caused based on concerns that commenters raised. For example, in defining “site,” the Commission substitutes the term “eligible support structure,” a defined term, for the proposed use of the word “facility,” which is not defined in § 1.6100 of its rules. Further, the *NPRM* also proposed specific alternatives. All localities that allege ambiguities raised meaningful comments and opined on the specific rule changes that the Commission adopts in this document.

38. Third, Local Governments claim that any collocation policy modification should be achieved through 47 U.S.C. 332. The Commission disagrees. Congress has directed the Commission to “encourage the rapid deployment of telecommunications services,” including with section 6409(a), in which Congress specifically addressed modifications of an existing tower or base station “[n]otwithstanding” Section 332. And the Commission has relied on section 6409(a) to require a streamlined review process for modifications of existing towers or base stations. Similar to the Commission’s actions in the 2014 Infrastructure Order, the rules it promulgates in this document “will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision, reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure, thereby promoting advanced wireless broadband services.”

39. Finally, Western Communities Coalition argues that the comment cycle is unusually short. The Administrative Procedure Act and the Commission’s rules require only that commenters be afforded reasonable notice of the proposed rulemaking. Western Communities Coalition provides no basis for its view that more than the 30-day time period following **Federal Register** publication (20 days for comments and 10 days for reply comments), was inadequate here, given that the *NPRM* raised a narrow set of issues that had been subject to prior public input in response to WIA’s petition for declaratory ruling and petition for rulemaking. And no commenter argues that it was prejudiced by the comment cycle’s length. Indeed, several commenters, including the Western Communities Coalition, have been considering these issues on the record since at least October 2019. Claims that the *NPRM* is vague or that

commenters have had insufficient time to comment are therefore contradicted by the record.

40. Accordingly, the Commission revises the compound expansion provision in § 1.6100(b)(7)(iv) and the definition of “site” in § 1.6100(b)(6). The Commission finds that the revisions it adopts in this document will streamline the use of existing infrastructure for the deployment of 5G and other advanced wireless networks while preserving localities’ ability to review and approve an eligible support structure.

41. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is set forth in the *Report and Order*.

42. *Paperwork Reduction Act.* This *Report and Order* does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

43. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the Report and Order

44. In the *Report and Order*, the Commission continues its efforts to reduce regulatory barriers to infrastructure deployment by further streamlining the state and local government review process for modifications to existing wireless towers or base stations under section 6409(a) of the Spectrum Act of 2012. The Commission’s decision will encourage the use of existing infrastructure, where efficient, to accelerate deployment of 5G and other advanced networks, which will enable

economic opportunities across the nation. More specifically, the *Report and Order* revises the Commission’s rules to provide that the modification of an existing tower outside the public rights-of-way that entails ground excavation or deployment of transmission equipment up to 30 feet in any direction outside the site will be eligible for streamlined processing under section 6409(a) review. The *Report and Order* clarifies that the site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site. It also revises the Commission’s rules to clarify that a site’s current boundaries are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

45. Our rule revisions reflect the recent recognition of 30 feet as an appropriate standard in the federal historic preservation context and the changes in the collocation marketplace, which is lacking space for collocations. This standard is consistent with the current collocation marketplace and with the threshold adopted in the Wireless Facilities NPA and recently included in the Amended Collocation NPA. Further, at least “eight states have passed laws that expressly permit compound expansion within certain limits . . . under an exempt or expedited review process.” Most of these laws allow expansion beyond 30 feet from the approved site.

B. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

46. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

47. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

48. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

49. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules and adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

50. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

51. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

52. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose

governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

53. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

54. The Commission’s own data— available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

55. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar

station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

56. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of

fixed microwave service licensees can be considered small.

57. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed licensee category includes some large entities.

58. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICs Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$41.5 million dollars or less. U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

59. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$15 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999.

Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

60. *Multichannel Video Distribution and Data Service (MVDDS).* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

61. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define "small entity" for MAS licensees as an entity that has average annual gross revenues of less than \$15 million over the three previous calendar years. A "Very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than \$3 million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

62. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16,

2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

63. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs. MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the "Wireless Telecommunications Carriers (except Satellite)" definition under the SBA size standards. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this category, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

64. *Non-Licensee Owners of Towers and Other Infrastructure.* Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200

feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration ("ASR") system and comply with applicable rules regarding review for impact on the environment and historic properties.

65. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a "Constructed" status and 13,987 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

66. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of \$38 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

67. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio

services include services operating in spectrum licensed under Part 95 of our rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however, that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

68. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in *radiotelephone communications*. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had

employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR licensees are small entities.

69. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. There are a total of approximately 3,577 PLMR licenses in the 4.9 GHz band; 19,359 PLMR licenses in the 800 MHz band; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

70. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services. There are 3,577 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of September 18, 2020. We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

71. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year and 17 with annual receipts between \$25 million and \$49,999,999 million. Therefore, based on the SBA’s size standard the majority of such entities are small entities.

72. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,580 stations and the number of commercial FM radio stations to be 6,726, for a total number of 11,306. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,172. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

73. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation. We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes

that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

74. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

75. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

76. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA/Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the

Commission has estimated the number of licensed noncommercial educational television stations to be 384. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

77. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

78. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

79. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size

standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

80. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

81. *EBS*—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

Transmission facilities may be based on a single technology or a combination of technologies.” The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to U.S. Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

82. The excavation or deployment boundaries of an eligible facilities request pose significant policy implications associated with the Commission's rules implementing section 6409(a) of the Spectrum Act of 2012. The Commission believes that the rule changes in the *Report and Order* provide certainty for providers, state and local governments (collectively, localities), and other entities interpreting these rules. We do not believe that our resolution of these matters will create any new reporting, recordkeeping, or other compliance requirements for small entities that will be impacted by our decision.

83. More specifically, the amendment of § 1.6100(b)(7)(iv) to allow a modification of an existing site that entails ground excavation or deployment of up to 30 feet in any direction outside a tower's site does not create any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, it permits an entity submitting an eligible facilities request to undertake limited excavation and deployment of up to 30 feet in any direction. While the Commission cannot quantify the cost of compliance with the changes adopted in the *Report and Order*, small entities should not have to hire attorneys, engineers, consultants, or other professionals to in order to comply. Similarly, the revised definition of “site” adopted in the *Report and Order* addresses localities' concerns of “unending accretion of [a] site by repeated applications for expansion” by ensuring that a locality has reviewed and approved the site that is the subject

of the eligible facilities request, and recognizes that the site may have changed since the locality initially approved it. This action does not create any new reporting, recordkeeping, or other compliance requirements for small entities. Instead, it prevents entities from having to file, and localities from having to receive and review, repeated applications for site excavation or deployments. Further, our actions providing clarity on the definitions of site and substantial change pursuant to the Commission's rules implementing section 6409(a) requirements should benefit all entities involved in the wireless facility modification process.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

84. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

85. In the *Report and Order*, the Commission clarifies and amends its rules associated with wireless infrastructure deployment to provide more certainty to relevant parties and enable small entities and others to more effectively navigate state and local application processes for eligible facilities requests. These changes, which broaden the scope wireless facility modifications that are eligible for streamlined review by localities under the Commission's rules implementing section 6409(a), should reduce the economic impact on small entities that deploy wireless infrastructure by reducing the costs and delay associated with the deployment of such infrastructure. The Commission's efforts to reduce regulatory barriers to infrastructure deployment by further streamlining the review process by localities for modifications to existing wireless towers or base stations under section 6409(a) should also reduce the economic impact on small localities by reducing the administrative costs associated with the review process.

86. The Commission considered but declined to adopt the industry's "hybrid" definition of "site." Adopting that proposal would risk permitting a tower owner to file an eligible facilities request even if it may have substantially increased the size of a tower site prior to the adoption of this *Report and Order* and without any necessary approval from a locality. It agreed with localities' concerns on the industry's proposed definition, and found that our revision addresses them by ensuring that a locality has reviewed and approved the eligible support structure that is the subject of the eligible facilities request outside of the section 6409(a) process, while recognizing that the boundaries may have changed since the locality initially approved the eligible support structure. It also considered and rejected a proposal that would risk creating a loophole whereby a tower owner could use the issuance of a permit—which does not necessarily involve a locality's review of the eligible support structure, and thus would not necessarily provide an opportunity for the locality to take into account an increase in the size of the site associated with that structure—to justify expansion of the site without proper local approval. On balance, the Commission believes the revisions adopted in the *Report and Order* best achieve the Commission's goals while at the same time minimize or further reduce the economic impact on small entities, including small state and local government jurisdictions.

87. The Commission also considered, but declined to adopt, NATOA and Local Governments proposal that, to the extent the Commission revises it "substantial change" definition, the compound expansion standard should be "the lesser of the following distance[s] from the current site (not including easements related to the site): a. 20% of the length or width of the current site measured as a longitudinal or latitudinal line from the current site to the excavation or deployment; or b. 30 feet." The Commission declined to adopt this proposal because it concluded that, on balance, the potential problems it could create outweigh the potential benefits it could achieve. The Commission reasoned that the standard of "20% of the length or width of the current site" would be difficult to administer, given that a site boundary is not necessarily a symmetrical shape. In addition, while the record supports the determination that a 30-foot expansion would be sufficient to accommodate minor equipment additions, the record does not provide support for the

determination that the "20%" standard would accomplish this goal. Moreover, adopting the "20%" proposal would provide limited additional benefit in addressing the concern raised by NATOA and Local Governments. Because a small tower site typically is associated with a small tower that has limited space for additional antennas, it is unlikely that operators would need to place a significant amount of additional equipment in an area outside the site boundaries. In addition, any modification to an existing tower that involves excavation or deployment within the 30-foot expanded area will be subject to the other criteria in the Commission's rules for determining whether there is a substantial change that does not warrant streamlined treatment under section 6409(a). Those criteria, which the Commission does not alter in this document, provide further limitation on the size or scope of a modification that involves excavation or deployment within 30 feet of the site boundaries.

Ordering Clauses

88. Accordingly, *it is ordered*, pursuant to sections 1, 4(i)–(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, and section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. 151, 154(i)–(j), 157, 201, 253, 301, 303, 309, 319, 332, 1455, that this *Report and Order* is hereby adopted.

89. *It is further ordered* that this *Report and Order* shall be effective 30 days after publication in the **Federal Register**.

90. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

91. *It is further ordered* that this *Report and Order* shall be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Communications equipment,
Telecommunications.
Federal Communications Commission.
Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Amend § 1.6100 by revising paragraphs (b)(6) and (b)(7)(iv) to read as follows:

§ 1.6100 Wireless Facility Modifications.

* * * * *

(b) * * *

(6) *Site*. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

(7) * * *

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

* * * * *

[FR Doc. 2020–25144 Filed 12–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 18–261 and 17–239, GN Docket No. 11–117; FCC 19–76; FRS 17201]

Implementing Kari's Law and RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved information collections associated with certain rules adopted in *Implementing Kari's Law and RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service*. The Commission also announces that compliance with the rules is now required. The Commission also removes and amends paragraphs advising that compliance was not required until OMB approval was obtained. This document is consistent with the 2019 Report and Order and rules, which state the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule sections and revise the rules accordingly.

DATES: *Effective date:* This rule is effective December 3, 2020.

Compliance dates: Compliance with 47 CFR 9.8(a) and 47 CFR 9.16(b)(3)(i) published at 84 FR 66716 on December 5, 2019, is required as of January 6, 2021. Compliance with 47 CFR 9.10(q)(10)(v), 47 CFR 9.16(b)(3)(ii) and (iii), published at 84 FR 66716 on December 5, 2019, is required as of January 6, 2022. Compliance with 47 CFR 9.11(b)(2)(ii) and (iv), (b)(4), and (b)(5)(ii) and (iii), published at 84 FR 66716 on December 5, 2019, is required as of January 6, 2021 for fixed services and January 6, 2022 for non-fixed services.

FOR FURTHER INFORMATION CONTACT: John A. Evanoff, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-0848, or email: john.evanoff@fcc.gov.

SUPPLEMENTARY INFORMATION:

This document announces that OMB approved the three information collection requirements in §§ 9.8(a); 9.10(q)(10)(v); 9.11(b)(2)(ii); 9.11(b)(2)(iv); 9.11(b)(4); 9.11(b)(5)(ii); (iii); and 9.16(b)(3)(i), (ii), and (iii).

The Commission publishes this document as an announcement of the compliance date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, regarding OMB Control Numbers 3060-1204, 3060-1085, or 3060-1280). Please

include the relevant OMB Control Number in your correspondence. The Commission will also accept your comments via the internet if you send them to PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on (1) September 17, 2020, for the text-to-911 information collection requirements contained in the Commission's rules at 47 CFR 9.10(q)(10)(v); (2) November 4, 2020, for the interconnected VoIP information collection requirements contained in the Commission's rules at 47 CFR 9.11(b)(2)(ii) and (iv), (b)(4), and (b)(5)(ii) and (iii); and (3) on November 10, 2020, for the fixed telephony and multi-line telephone system collection requirements contained in the Commission's rules at 47 CFR 9.8(a); and 9.16(b)(3)(i), (ii), and (iii).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060-1204.

OMB Approval Date: September 17, 2020.

OMB Expiration Date: September 30, 2023.

Title: Deployment of Text-to-911.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,882 respondents; 52,963 responses.

Estimated Time per Response: 1-8 hours.

Frequency of Response: One-time; annual reporting requirements, and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403.

Total Annual Burden: 76,766 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: This notice pertains to multiple information collections relating to the Commission's text-to-911 regulations. As described below, OMB previously approved the information collections associated with deployment of text-to-911. This notice announces that OMB has approved modifications of the text-to-911 information collections pursuant to the *Kari's Law and RAY BAUM'S Act Report and Order*. In addition, OMB has approved modification of the PSAP Text-to-911 Registration Form so that PSAPs can use the form to request RTT service pursuant to the *RTT Report and Order*.

Deployment of Text-to-911. In 2014, the Commission adopted *Facilitating the Deployment of Text-to-911 and Other Next-Generation 911 Applications, Framework for Next Generation 911 Deployment*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 14-118, released on August 13, 2014, in PS Docket Nos. 11-153 and 10-255 (*Text-to-911 Report and Order*). The *Text-to-911 Report and Order* was published at 79 FR 55367 (September 16, 2014). In that Order, the Commission adopted final rules—containing information collection requirements—to enable the Commission to implement text-to-911 service. The text-to-911 rules provide enhanced access to emergency services for people with disabilities and fulfill a crucial role as an alternative means of emergency communication for the general public in situations where sending a text message to 911 as opposed to placing a voice call could be vital to the caller's safety. The *Text-to-911 Report and Order* adopted rules to commence the implementation of text-to-911 service with an initial deadline of December 31, 2014 for all covered text providers to be capable of supporting text-to-911 service. The *Text-to-911 Report and Order* also provided that covered text providers would then have a six-month implementation period. They must begin routing all 911 text messages to a PSAP by June 30, 2015 or within six months of a valid PSAP request for text-to-911 service, whichever is later.

To implement these requirements, the Commission seeks to collect information primarily for a database in which PSAPs voluntarily register that they are technically ready to receive text messages to 911. As PSAPs become text-ready, they may either register in the PSAP database or provide other written notification reasonably acceptable to a covered text messaging provider. Either measure taken by the PSAP constitutes sufficient notification pursuant to the rules in the *Text-to-911 Report and Order*. PSAPs and covered text providers may also agree to an alternative implementation timeframe (other than six months). Covered text providers must notify the FCC of the dates and terms of any such alternate timeframe within 30 days of the parties' agreement. Additionally, the rules adopted by the *Text-to-911 Report and Order* include other information collections for third party notifications necessary for the implementation of text-to-911, including notifications to consumers, covered text providers, and the Commission. These notifications are essential to ensure that all affected parties are aware of the limitations, capabilities, and status of text-to-911 services. These information collections enable the Commission to meet the objectives for implementation of text-to-911 service and for compliance by covered text providers with the six-month implementation period in furtherance of the Commission's core mission to ensure the public's safety.

Real-Time Text. In the *RTT Report and Order*, the Commission amended its rules to facilitate a transition from text telephone (TTY) technology to RTT as a reliable and interoperable universal text solution over wireless internet Protocol (IP) enabled networks for people who are deaf, hard of hearing, deaf-blind, or have a speech disability. Section 9.10(c) of the rules requires Commercial Mobile Radio Service (CMRS) providers to be "capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of [TTY devices]." Section 9.10(c) also states that "CMRS providers that provide voice communications over IP facilities are not required to support 911 access via TTYs if they provide 911 access via [RTT] communications, in accordance with 47 CFR part 67, except that RTT support is not required to the extent that it is not achievable for a particular manufacturer to support RTT on the provider's network." The *RTT Report and Order* provides that once a PSAP is so capable, the requested service provider must begin delivering

RTT communications in an RTT format within six months after a valid request is made, to the extent the provider has selected RTT as its accessible text communication method.

Dispatchable Location. Section 506 of RAY BAUM'S Act requires the Commission to "consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used." Section 506, Pub. L. 115–127, 132 Stat. 326. In the *Kari's Law and RAY BAUM'S Act Report and Order*, the Commission implemented Section 506 of RAY BAUM'S Act by adopting dispatchable location rules for mobile text and other 911-capable services. For mobile text services, the Commission adopted 47 CFR 9.10(q)(10)(v), which provides that no later than January 6, 2022, covered text providers must provide the following location information with all 911 text messages routed to a PSAP:

Automated dispatchable location, if technically feasible; otherwise either end-user manual provision of location information, or enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost.

OMB Control Number: 3060–1085.

OMB Approval Date: November 4, 2020.

OMB Expiration Date: November 30, 2023.

Title: Section 9.11, Interconnected Voice Over internet Protocol (VoIP) E911 Compliance; Section 9.12, Implementation of the NET 911 Improvement Act of 2008: Location Information from Owners and Controllers of 911 and E911 Capabilities.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or Households; Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents and Responses: 72 respondents; 16,200,496 responses.

Estimated Time per Response: 0.09 hours (five minutes).

Frequency of Response: One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Statutory authority for this information collection is contained in 47 U.S.C. 151, 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316,

319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471.

Total Annual Burden: 1,481,249 hours.

Total Annual Cost: \$238,890,000.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This notice pertains to multiple information collections relating to the Commission's 911 regulations for interconnected VoIP. First, the FCC requested OMB approval to modify the current information collection in OMB Control No. 3060–1085 to implement congressional mandates arising from Section 506 of RAY BAUM'S Act, which requires the Commission to "consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system."

Second, the Commission obtained OMB approval to merge the existing information collection in OMB Control No. 3060–1131, Implementation of the NET 911 Improvement Act of 2008: Location Information from Owners and Controllers of 911 and E911 Capabilities. The Commission previously stated that it planned to merge the information collection requirements contained in that information collection into OMB Control Number 3060–1085, Section 9.5, Interconnected Voice Over internet Protocol (VoIP) E911 Compliance, into a single collection. Therefore, upon OMB approval, the Commission will discontinue the information collection under OMB Control No. 3060–1131.

Interconnected Voice Over internet Protocol (VoIP) E911 Compliance. The Commission is obligated by statute to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state, and local governments, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

In 2005, the Commission adopted *IP-Enabled Services, E911 Requirements*

for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, FCC 05–116, released on June 3, 2015, in WC Docket Nos. 04–36 and 05–196 (*2005 Report and Order*), which set forth rules requiring providers of VoIP services that interconnect with the nation's existing public switched telephone network (interconnected VoIP services) to supply E911 capabilities to their customers.

To ensure E911 functionality for customers of VoIP service providers, the Commission requires the following information collections:

A. Location Registration. Requires providers to interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of location information to emergency answering points.

B. Provision of Automatic Location Information (ALI). Interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

C. Customer Notification. Requires that all providers of interconnected VoIP are aware of their interconnected VoIP service's actual E911 capabilities and that they specifically advise every subscriber, both new and existing, prominently and in plain language of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. Record of Customer Notification. Requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. User Notification. In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the customer premises equipment used in conjunction with the interconnected VoIP service.

Section 506 of RAY BAUM'S Act. Section 506 of RAY BAUM'S Act requires the Commission to "consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the

technological platform used." Section 506, Pub. L. 115–127, 132 Stat. 326. In the *Kari's Law and RAY BAUM'S Act Report and Order*, the Commission implemented Section 506 of RAY BAUM'S Act by adopting dispatchable location rules for interconnected VoIP and other 911-capable services. For interconnected VoIP services, the Commission amended the 911 Registered Location and customer notification requirements applicable to interconnected VoIP service providers.

Specifically, the Commission in the *Kari's Law and RAY BAUM'S Act Report and Order* revised the Registered Location requirements at 47 CFR 9.11 to facilitate the provision of automated dispatchable location for fixed and non-fixed interconnected VoIP services. For fixed services, the rule requires provision of automated dispatchable location with each 911 call. For non-fixed services, the rule requires provision of automated dispatchable location with 911 calls if technically feasible. If providing automated dispatchable location is not technically feasible, non-fixed interconnected VoIP service providers may provide Registered Location or alternative location information for 911 calls as defined in the rules, or they may route the caller to a national emergency call center. For fixed services, compliance with these location requirements is required by January 6, 2021; for non-fixed services, compliance is required by January 6, 2022. Regarding customer notification requirements, the Commission afforded service providers flexibility to use any conspicuous means to notify end users of limitations in 911 service.

The requirements adopted in the *Kari's Law and RAY BAUM'S Act Report and Order* leverage technology advancements since the *2005 Report and Order*, build upon the existing Registered Location requirements, and expand options for collecting and supplying end-user location information with 911 calls. Accordingly, they serve a vital public safety interest.

NET 911 Act. The New and Emerging Technologies 911 Improvement Act of 2008 (Pub. L. 110–283, 122 Stat. 2620) (NET 911 Act) explicitly imposes on each interconnected VoIP provider the obligation to provide 911 and E911 service in accordance with the Commission's existing requirements. In addition, the NET 911 Act directs the Commission to issue regulations by no later than October 21, 2008 that ensure that interconnected VoIP providers have access to any and all capabilities they need to satisfy that requirement.

In 2008, the Commission adopted *Implementation of the NET 911 Improvement Act of 2008*, Report and Order, FCC 08–249, released on October 21, 2008, in WC Docket No. 08–171 (*2008 Report and Order*), which implements certain key provisions of the NET 911 Act. The information collection requirements adopted in the *2008 Report and Order* arise out of the requirement for an owner or controller of a capability that can be used for 911 or E911 service to make that capability available to a requesting interconnected VoIP provider under certain circumstances. In particular, an owner or controller of such capability must make it available to a requesting interconnected VoIP provider if that owner or controller either offers that capability to any commercial mobile radio service (CMRS) provider or if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules. These information collection requirements help to ensure continued cooperation between interconnected VoIP service providers and Public Safety Answering Points (PSAPs) in complying with the Commission's E911 requirements.

OMB Control Number: 3060–1280.

OMB Approval Date: November 10, 2020.

OMB Expiration Date: November 30, 2023.

Title: E911 Compliance for Fixed Telephony and Multi-line Telephone Systems.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,275,636 respondents; 38,048,948 responses.

Estimated Time per Response: 0.016 hours (one minute).

Frequency of Response: One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471.

Total Annual Burden: 634,610 hours.

Total Annual Cost: \$1,911,540.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission is obligated by statute to promote “safety of life and property” and to “encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure” for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state and local government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

Section 506 of RAY BAUM’S Act requires the Commission to “consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system.” RAY BAUM’S Act also states that, “[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call” RAY BAUM’S Act defines a “9–1–1 call” as a voice call that is placed, or a message that is sent by other means of communication, to a Public Safety Answering Point (PSAP) for the purpose of requesting emergency services.

As part of implementing Section 506 of RAY BAUM’S Act, on August 1, 2019, the Commission adopted a *Report and Order (2019 Order)*, set forth rules requiring Fixed Telephony providers and MLTS providers to ensure that dispatchable location is conveyed with 911 calls.

The Commission’s *2019 Order* adopted 9.8(a) and 9.16(b)(3)(i), (ii), and (iii) to facilitate the provision of automated dispatchable location. For Fixed Telephony and in fixed Multi-line Telephone Systems (MLTS) environments, providers must provide automated dispatchable location with 911 calls. For on-premises, non-fixed devices associated with an MLTS, the MLTS operator or manager must provide automated dispatchable location to the appropriate PSAP when technically feasible; otherwise they must provide either dispatchable location based on end-user manual update, or alternative location information. For off-premises MLTS calls to 911, the MLTS operator or

manager must provide dispatchable location, if technically feasible. Otherwise it must provide either (1) manually-updated dispatchable location, or (2) enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost. The requirements adopted in the *2019 Order* account for variance in the feasibility of providing dispatchable location for non-fixed MLTS 911 calls, and the means available to provide it. The information collection requirements associated with these rules will ensure that Fixed Telephony and MLTS providers have the means to provide 911 callers’ locations to PSAPs, thus reducing response times for emergency services.

List of Subjects in 47 CFR Part 9

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Marlene Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 9 as follows:

PART 9—911 REQUIREMENTS

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

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

§ 9.8 [Amended]

- 2. Amend § 9.8 by removing and reserving paragraph (b).
■ 3. Amend § 9.10 by revising paragraph (s) to read as follows:

§ 9.10 911 Service.

* * * * *

(s) *Compliance date(s).* Paragraphs (i)(2)(ii)(C) and (D), (i)(2)(ii)(J)(4), (i)(4)(iv) and (v), (j)(4), and (k) of this section contain information-collection and recordkeeping requirements. Compliance with paragraphs (i)(2)(ii)(C) and (D), (i)(2)(ii)(J)(4), (i)(4)(iv) and (v), (j)(4), and (k) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance dates with those paragraphs and revising this paragraph (s) accordingly.

§ 9.11 [Amended]

- 4. Amend § 9.11 by removing paragraph (c).

§ 9.16 [Amended]

- 5. Amend § 9.16 by removing paragraph (c).

[FR Doc. 2020–25879 Filed 12–1–20; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 19–311, 13–249; FCC 20–154, FR ID 17233]

All-Digital AM Broadcasting, Revitalization of the AM Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission provides an option for AM stations to broadcast using an all-digital signal.

DATES: Effective January 4, 2021, except for new rule § 73.406. The Commission will publish a document in the **Federal Register** announcing the effective date of the rule.

FOR FURTHER INFORMATION CONTACT:

James Bradshaw, Deputy Division Chief, Media Bureau, Audio Division (202) 418–2739; Christine Goepf, Attorney Advisor, Media Bureau, Audio Division, (202) 418–7834. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order (R&O), MB Docket Nos. 19–311, 13–249; FCC 20–154, adopted on October 27, 2020, and released on October 28, 2020. The full text of the R&O will be available electronically via the FCC’s Electronic Document Management System (EDOCs) website at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC’s Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act

The R&O contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, *see* 44 U.S.C. 3507. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the PRA. These new or modified information collections will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of the R&O to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. *Introduction.* In this R&O, the Commission adopts rules regarding all-digital AM broadcasting that it proposed in a notice of proposed rulemaking, FCC 19–123, 34 FCC Rcd 11560 (2019), 85 FR 649 (Jan. 7, 2020) (NPRM). These rules allow AM stations, on a voluntary basis, to cease broadcasting an analog signal and broadcast using only an all-digital signal in the HD Radio MA3 mode. This measure will benefit AM stations and their listeners by improving reception quality and listenable coverage in stations' service areas and will advance the Commission's goal of improving and modernizing the AM radio service. Currently, the AM broadcasting service suffers from interference and reception issues caused in part by increased emissions from various consumer electronic devices as well as broadcast sources. As a result, many AM stations are constrained to low-fidelity voice formats such as talk radio. Under the current rules, AM and FM stations are permitted to broadcast using either an analog signal or the hybrid analog and digital system licensed by Xperi Corporation under the brand name HD Radio. In the United States, the only technology for digital

broadcasting in the AM and FM bands approved by the Commission is the HD Radio IBOC system. Although many FM stations have converted to hybrid broadcasting, various technical and other issues have prevented the widespread adoption of hybrid broadcasting by AM stations.

2. Testing and experimental broadcasting indicate that all-digital AM transmission has the potential to improve signal “robustness”—or resistance to interference and other impairments—as well as the ability to transmit auxiliary information to accompany the main audio programming. This robustness will result in a clearer signal for listeners and a greater area of listenable coverage compared to an analog signal. All-digital broadcasting will increase the format choices that AM broadcasters can offer to their audiences, including the option of music programming. Digital operation also eliminates the tradeoff between receiver audio bandwidth and noise performance. In addition, digital broadcasting allows visual and other metadata, such as song and artist identification, station identification, and emergency information, to be transmitted along with the audio content. Such auxiliary information is increasingly expected by consumers and considered to be a vital component of modern broadcasting. Finally, all-digital broadcasting will result in energy and spectrum efficiencies, because it provides additional and/or improved services over the same allocated frequencies.

3. The Commission anticipates that potential loss of service to analog-only listeners will be mitigated by the gradual, voluntary nature of the transition, the financial interest of radio stations in reaching a wide audience, duplicate programming provided by co-owned AM stations, and analog broadcasts on FM translators affiliated with all-digital AM stations.

4. The Commission finds that a sufficient number of digital receivers are currently in use to support a voluntary option to convert to all-digital. Moreover, as the number of digital receivers increases, more markets will be able to support all-digital broadcasting. Similarly, the cost of conversion is not an impediment to providing a voluntary option to convert, because stations can make their own decisions whether to pursue all-digital operations based on their own financial and technical situation as well as the needs and interests of their audience and the number of digital receivers in their market. The Commission notes that at the time of adoption, Xperi has

stated that it will waive licensing fees for AM stations that choose to go all-digital.

5. *Operating and technical rules.* In the R&O, the Commission establishes that the power limits for all-digital stations must be calculated using the average power of the all-digital signal, including the unmodulated analog carrier and all of the digital sidebands, to determine whether the station complies with the nominal power limits set out in § 73.21 of the Commission's rules. Using the average power to calculate compliance with the nominal power limit will enable more stations to use existing transmitters for all-digital operations, thus reducing the cost of upgrading to all-digital and allowing more stations to convert. In addition, this method of calculating nominal power will result in a lower operating power for all-digital stations, which will be less likely to cause interference with analog signals while still maintaining improved listenable coverage areas.

6. The Commission applies the emissions mask set out in § 73.44 of the Commission's rules to all-digital operations. This emissions mask attenuates—or limits—spectral emissions outside a bandwidth of 20 kHz to the point where they do not cause significant adjacent channel interference. The Commission concludes that these emissions limits will adequately protect stations on adjacent channels from all-digital interference. It declines to impose the stricter emissions limits set out in the HD Radio specifications, which may not be set at technically feasible levels and may need to be revisited in light of field data from all-digital experimental operation. Although testing indicates that the digital signals may cause some increased degradation to analog signals, in most cases this will be masked by the noise floor, and in any case there is no evidence that interference will occur within service areas that are currently protected under our rules.

7. Recognizing that digital power measurement is an evolving and highly technical area, the Commission provides all-digital licensees the flexibility to choose any reliable and reasonably accurate method to measure their compliance with the Commission's operating power and power spectral density rules, including measurement tools integrated into digital transmitters, thermocouple RF ammeters, or averaging the power spectral density in a 300-Hz bandwidth over a minimum time span of 30 seconds and a minimum of 100 sweeps.

8. Each all-digital station is obligated to provide at least one free over-the-air

digital programming stream that is comparable to or better in audio quality than a standard analog broadcast. Beyond this requirement, an all-digital licensee can use its additional digital bitrate capacity for either broadcast or non-broadcast services consistent with the Commission's technical rules. The Commission permits each AM broadcaster to select either core-only or enhanced mode transmission as their situation dictates.

9. The Commission imposes the same carrier frequency tolerance applicable to analog and hybrid stations (± 20 Hz) on all-digital AM stations. It declines to impose a ± 1 Hz AM carrier frequency tolerance standard on all AM stations as proposed in the NPRM, on the basis that the benefit to audio reception of doing so would not outweigh the burden on already struggling AM stations. The Commission also declines to incorporate by reference the National Radio Systems Committee's NRSC-5-D standard governing all-digital transmission into the Commission's rules, as proposed in the NPRM, finding that there is no need to do so and that—as a voluntary industry standard—the standard can be more readily updated in response to technological developments or operational feedback from all-digital stations.

10. The Commission prohibits all-digital stations from causing interference as currently defined in the rules. Although testing indicates that the potential for co-channel interference is higher for all-digital than for analog, the Commission concludes that neither adjacent- or co-channel interference as defined in the rules is likely to occur. The potential for additional co-channel interference is mitigated in the presence of a high level of environmental noise, in which case the all-digital interference is likely to be subsumed by the overall noise floor, masking the interfering effect of the all-digital signal. However, if prohibited interference occurs, the Commission establishes a remediation procedure based on the procedures currently applicable to hybrid stations. Specifically, the Commission expects AM all-digital operators and complaining stations to work together to identify whether interference exists and to resolve it in a mutually acceptable fashion, including voluntary power reduction.

11. The new rules permit up to 6 dB power reduction, without prior approval, in the all-digital secondary or tertiary sidebands (but not the primary digital sidebands) to avoid or resolve prohibited interference. The Commission expects that the gradual nature of the transition will enable it to

resolve any immediate issues using existing rules and the remediation procedure. Both daytime and nighttime all-digital AM operation are permitted, and any prohibited interference resulting from nighttime skywave transmissions must be promptly resolved. Finding that the record demonstrates the technical feasibility of all-digital broadcasting, the Commission concludes that it is not in the public interest to delay implementation by requiring additional tests or require that stations undertake potentially expensive digital conversions under experimental licenses.

12. All all-digital AM stations, like other broadcast stations, must participate in the nationwide Emergency Alert System (EAS). This obligation extends to ensuring that any “downstream” EAS participant stations are capable of receiving and decoding EAS alerts from the all-digital station or can adjust their monitoring assignments to receive EAS alerts from another nearby station. The Commission concludes that listeners will have sufficient access to EAS alerts without mandating that EAS alerts be transmitted using analog signals. In addition, all-digital stations can transmit useful emergency information to listeners other than on the main audio stream, including, for example, text in multiple languages or images such as missing persons or evacuation routes.

13. The Commission adopts a modified version of the current digital notification procedure for all-digital stations by adding a 30-day waiting period for certain operational changes. Specifically, it requires licensees to electronically file a digital notification, using the existing FCC Form 335-AM Digital Notification (or any successor notification), to notify the Commission of the following changes: (1) The commencement of new all-digital operation; (2) an increase in nominal power of an all-digital AM station; or (3) a transition from core-only to enhanced operating mode. All-digital AM notifications will be placed on a Commission public notice, and new operation may begin no sooner than 30 calendar days from the date of this public notice. This will minimize the paperwork required for all-digital AM conversions while giving local co-channel and adjacent channel stations time to gather baseline data on their existing coverage before the new all-digital operation begins. Digital notification must be submitted within ten days of implementing all other changes, namely: (1) Any reduction in nominal power of an all-digital AM

station; (2) a transition from enhanced to core-only operating mode; or (3) a reversion from all-digital to hybrid or analog operation.

14. Although the Commission directs broadcasters to use the current Form 335-AM for all-digital notifications, additional information is required for notification of all-digital operations specifically. Therefore, until the Form 335-AM is updated to display all-digital operation requirements, the Commission directs filers to select “N/A” as appropriate within the form and submit an attachment with the Form 335-AM containing the following information: (1) The type of notification (all-digital notification, increase in nominal power, reduction in nominal power, transition from core-only to enhanced, transition from enhanced to core-only, reversion from all-digital to hybrid or analog operation); (2) the date that new or modified all-digital operation will commence or has ceased; (3) a certification that the all-digital operations will conform to the relevant nominal power and spectral emissions limits; (4) the nominal power of the all-digital station; (5) a certification that the all-digital station complies with all EAS requirements; and (6) if a notification of commencement of new all-digital service or a nominal power change, whether the station is operating in core-only or enhanced mode.

15. During the 30-day period established above, the Commission requires that an AM broadcaster commencing new all-digital operation must provide reasonable notice to its listeners that the station will be converting to all-digital operation and will no longer be available on analog receivers. Because broadcasters have a strong incentive to promote such a change to their listeners, the Commission gives them flexibility to use reasonable methods intended to reach their audience, including on-air and website announcements. However, in the event that the reasonableness of notice of conversion to all-digital operation is challenged, the Commission would consider it presumptively sufficient if the broadcaster provided at least the same amount of notice as that set out in § 73.3580, the local public notice rule, with which broadcasters are already familiar.

16. The Commission declined to consider alternative technologies to HD Radio, such as Digital Radio Mondiale, finding that in the absence of any data regarding DRM performance in the U.S. AM band, it cannot evaluate its merits. Because it is in the public interest to provide an immediate path forward for

AM stations to broadcast in all-digital as their circumstances allow, the Commission approves the HD Radio MA3 mode as the only currently feasible technology option before it, but does not foreclose the future consideration of alternative transmission technologies.

Procedural Matters

17. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the NPRM in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. Because the Commission amended the rules in this Report and Order (R&O), it included this Final Regulatory Flexibility Analysis (FRFA), which conforms to the RFA.

18. *Need for, and Objectives of, the R&O.* The R&O adopts several rule changes to allow AM stations to voluntarily broadcast an all-digital signal using the digital broadcasting technology known as HD Radio MA3. This action will improve the AM radio service by providing enhanced audio quality, increasing listenable reception areas, and allowing additional metadata textual information, such as song and artist identification, traffic services, and digital emergency alerts, to be transmitted along with the main audio programming. All-digital operation will increase the format choices that AM broadcasters can offer to their audiences, including the option of music programming. These greater capabilities will level the playing field between AM and FM signals from the listener's perspective, and help AM stations recapture audiences lost to FM radio, satellite radio, or online streaming services because of their higher sound fidelity and broader programming array. All-digital AM operation will also provide the full technological benefits of digital broadcasting while avoiding the shortcomings of the current analog or hybrid modes of transmission, which are more susceptible to noise and interference, more likely to cause interference to other stations, and place more demands on an AM station's transmission and antenna system.

19. All-digital operation provides greater usable signal coverage, is energy- and spectrum-efficient, and will be supported by an ever-increasing number of digital receivers. Since all-digital operation is completely voluntary, and the cost of conversion will vary from station to station, AM broadcasters will be able to decide whether conversion to

all-digital meets their own needs and market demand. In the R&O, the Commission concludes that the public interest in the long-term viability of AM stations and the valuable services they provide, outweighs a possible loss of service to some current analog listeners as broadcasters and the listening public transition to an all-digital environment. All-digital service represents a significant and singular opportunity to preserve the AM service for future listeners. Any disruption to analog listeners will take place gradually, as AM stations individually decide their audience is ready to convert to all-digital, with full notice to consumers and ample opportunity to adjust to the new technology.

20. In the R&O, the Commission authorizes all-digital operations subject to the requirement that all-digital operations not cause prohibited interference to existing broadcast stations. In the unlikely event that such interference would occur, the Commission will apply current remediation procedures that encourage cooperation between the parties to resolve complaints and include an option to voluntarily reduce power. The Commission adopts the proposal in the NPRM that each all-digital station is obligated to provide at least one free over-the-air digital programming stream that is comparable to or better in audio quality than a standard analog broadcast. It also mandates that all-digital AM stations participate in the national Emergency Alert System (EAS).

21. Although all-digital conversion is a purely voluntary process for individual AM stations, the Commission strongly supports an all-digital future and affirms that the objective of the proceeding is a viable all-digital AM service. Supporting all-digital removes any regulatory uncertainty about the future of the AM HD Radio system and should give car companies and receiver manufacturers reassurance to invest in AM digital receivers. Thus, an all-digital environment will reduce the likelihood of interference while maximizing digital benefits such as an improved high-quality listener experience, signal robustness, reliable and listenable coverage, and superior audio quality.

22. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments to the IRFA filed.

23. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief

Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

24. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

25. *Radio Stations.* Radio stations are an Economic Census category that "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year, and 43 firms had annual receipts of \$25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, the Commission concludes that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

26. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM stations to be 4,570 and the number of commercial FM stations to be 6,706 for a total of 11,276, along with 8,303 FM translator and booster stations. According to BIA/Kelsey Publications, Inc.'s Media Access Pro Database, as of March 2020, 4,389 AM stations and 6,767 FM stations had revenues of \$41.5 million or less. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be

4,197. NCE stations are non-profit, and therefore considered to be small entities. Accordingly, the Commission estimates that the majority of radio broadcast stations are small entities. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

27. Moreover, as noted above, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

28. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The rules changes adopted in the R&O establish a straightforward procedure for stations to notify the Commission of a change to all-digital operations. The notification requirement for all-digital operations, is as follows: AM licensees must electronically file a digital notification, using the existing FCC Form 335—AM Digital Notification (or any successor notification form), to notify the Commission of the following proposed changes: (1) The commencement of new all-digital operation; (2) an increase in nominal power of an all-digital AM station; or (3) a transition from core-only to enhanced operating mode. All-digital AM notifications will be placed on an FCC public notice, and new operation may begin no sooner than 30 calendar days from the date of this public notice. This notification process will minimize the paperwork required for all-digital AM conversions, while giving local co-channel and adjacent channel stations time to gather baseline data on their existing coverage before the new all-digital operation begins. Digital

notification must be submitted within ten days of implementing all other changes, namely: (1) Any reduction in nominal power of an all-digital AM station; (2) a transition from enhanced to core-only operating mode; or (3) a reversion from all-digital to hybrid or analog operation. There is no fee for filing a digital notification.

29. The R&O does not adopt recordkeeping requirements. However, it does require licensees converting AM stations to all-digital operation to provide reasonable notice to its listeners that their station will be converting to all-digital operations and will no longer be available on analog receivers.

30. *Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

31. Conversion to all-digital AM transmission (and then, consequent compliance with the rules governing all-digital operation) is completely voluntary and therefore flexible, based on an AM broadcaster’s assessment of its individual financial and technical circumstances, including size. AM broadcasters overwhelmingly support the proposal to allow all-digital AM broadcasting, as do broadcast engineers, technology companies, and individual listeners. Of the technical requirements contemplated in the NPRM, the Commission evaluated several alternative options. The Commission originally considered imposing a (non-voluntary) stricter frequency tolerance standard of 1 Hz on all AM broadcasters, but decided that the benefits of doing so would not outweigh the associated burden of upgrading transmission equipment, particularly for smaller AM broadcasters, and declined to adopt the requirement. In addition, the Commission considered incorporating the NRSC–5–D Standard governing the technical implementation of HD Radio all-digital radio into the rules, but upon careful consideration of the record, decided that doing so would be unnecessary and could stifle industry

innovation regarding the all-digital HD Radio technology. Therefore, in reaching the approach taken in the R&O, the Commission considered various alternatives and their effects on AM broadcasters, including small entities.

32. *Report to Congress.* The Commission will send a copy of the R&O to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the document, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the document and FRFA (or summaries thereof) will also be published in the **Federal Register**.

33. *Paperwork Reduction Act.* This R&O contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

34. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that these rules are “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this R&O to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

Ordering Clauses

35. *It is ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Report and Order is *adopted* and *will become effective* 30 days after publication in the **Federal Register**.

36. *It is further ordered* that part 73 of the Commission’s Rules is *amended* as set forth in the Final Rules and such rule amendments will become effective 30 days after publication in the **Federal Register**, except for new § 73.406, which contains new or modified information

collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

37. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

38. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.402, add paragraph (h) to read as follows:

§ 73.402 Definitions.

* * * * *

(h) *All-digital AM station.* An AM station broadcasting an IBOC waveform that consists solely of digitally modulated subcarriers and the unmodulated AM carrier.

■ 3. In § 73.403, revise paragraph (a) to read as follows:

§ 73.403 Digital audio broadcasting service requirements.

(a) Broadcast radio stations using IBOC must transmit at least one over-the-air digital audio programming stream at no direct charge to listeners. In addition, a hybrid broadcast radio station must simulcast its analog audio programming on one of its digital audio programming streams. The DAB audio programming stream that is provided pursuant to this paragraph (a) must be

at least comparable in sound quality with a standard analog broadcast.

* * * * *

■ 4. In § 73.404, revise the section heading and paragraphs (a) and (b) and remove paragraph (e) to read as follows:

§ 73.404 IBOC DAB operation.

(a) The licensee of an AM or FM station, or the permittee of a new AM or FM station which has commenced program test operation pursuant to § 73.1620, may commence hybrid IBOC DAB operation with digital facilities which conform to the technical specifications specified for hybrid DAB operation in the (2002) *First Report and Order* in MM Docket No. 99–325, as revised in the Media Bureau's subsequent *Order* in MM Docket No. 99–325. In addition, the licensee of an AM station, or the permittee of a new AM station that has commenced program test authority pursuant to § 73.1620, may, with reasonable notice to listeners, commence all-digital IBOC operation with digital facilities that conform to the requirements set out in the (2020) *Report and Order* in MB Docket No. 19–311 and MB Docket No. 13–249. An AM or FM station may transmit IBOC signals during all hours for which the station is licensed to broadcast.

(b) In situations where interference to other stations is anticipated or actually occurs, hybrid AM licensees may, upon notification to the Commission, reduce the power of the primary DAB sidebands by up to 6 dB. All-digital AM licensees, may, upon notification to the Commission, reduce the power of the secondary and tertiary sidebands by up to 6 dB, even if doing so results in non-compliance with § 73.1560(a)(1). Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

* * * * *

■ 5. Add § 73.406 to read as follows:

§ 73.406 Notification.

(a) Hybrid AM and FM licensees must electronically file a digital notification to the Commission in Washington, DC, within 10 days of commencing IBOC digital operation.

(1) All-digital licensees must file a digital notification within 10 days of the following changes:

- (i) Any reduction in nominal power of an all-digital AM station;
- (ii) A transition from enhanced to core-only operating mode; or
- (iii) A reversion from all-digital to hybrid or analog operation.

(2) All-digital licensees will not be permitted to commence operation sooner than 30 calendar days from public notice of digital notification of the following changes:

- (i) The commencement of new all-digital operation;
 - (ii) An increase in nominal power of an all-digital AM station; or
 - (iii) A transition from core-only to enhanced operating mode.
- (b) Every digital notification must include the following information:
- (1) The call sign and facility identification number of the station;
 - (2) If applicable, the date on which the new or modified IBOC operation commenced or ceased;
 - (3) The name and telephone number of a technical representative the Commission can call in the event of interference;

(4) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of this chapter and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b) of this chapter. Any station that cannot certify compliance must submit an environmental assessment ("EA") pursuant to § 1.1311 of this chapter and may not commence IBOC operation until such EA is ruled upon by the Commission.

(c) Each AM digital notification must also include the following information:

- (1) A certification that the IBOC DAB facilities conform to applicable nominal power limits and emissions mask limits;
- (2) The nominal power of the station; if separate analog and digital transmitters are used, the nominal power for each transmitter;
- (3) If applicable, the amount of any reduction in an AM station's digital carriers;

(4) For all-digital stations, the type of notification (all-digital notification, increase in nominal power, reduction in nominal power, transition from core-only to enhanced, transition from enhanced to core-only, reversion from all-digital to hybrid or analog operation);

(5) For all-digital stations, if a notification of commencement of new all-digital service or a nominal power change, whether the station is operating in core-only or enhanced mode; and

(6) For all-digital stations, a certification that the all-digital station complies with all Emergency Alert System (EAS) requirements in part 11 of this chapter.

(d) Each FM digital notification must also include the following information:

(1) A certification that the IBOC DAB facilities conform to the HD Radio emissions mask limits;

(2) FM digital effective radiated power used and certification that the FM analog effective radiated power remains as authorized;

(3) If applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna; and

(4) If applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317.

[FR Doc. 2020-25252 Filed 12-2-20; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 19-3; FCC 20-121; FRS 17135]

Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Dismissal of petition for reconsideration.

SUMMARY: In this document the Federal Communications Commission (Commission) addresses the Petition for Reconsideration (Petition) filed by Discount Legal, regarding the Commission's Report and Order in the Noncommercial Educational (NCE) comparative standards proceeding (*2019 NCE R&O*). The Commission dismisses the Petition as procedurally defective, and alternatively and independently, denies the Petition.

DATES: Request for Petition for Reconsideration of the final rule published at 85 FR 23941 (April 30, 2020). The Commission adopted the Order on Reconsideration dismissing and denying the Petition for Reconsideration on September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418-2721; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418-2704; Amy Van de Kerckhove, Attorney Advisor, Media Bureau, Audio Division, (202) 418-2726.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Reconsideration Order) in the NCE comparative standards proceeding, MB Docket No. 19-3, FCC 19-127, released March 20, 2020, published at 85 FR 7880 on February 12, 2020. The full text of the Reconsideration Order is available electronically via the FCC's Electronic Document Management System (EDOCS) website at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC's Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. *Introduction.* In this Reconsideration Order, the Commission addresses the Petition for Reconsideration filed by Discount Legal seeking reconsideration of the *2019 NCE Report and Order*. The Petition asks the Commission to authorize "secondary grants" in mutually exclusive (MX) FM radio noncommercial educational (NCE) groups, after the initial resolution of the MX applications. The Commission dismisses the Petition as procedurally defective, and alternatively and independently, denies the Petition.

2. *Background.* Conflicting NCE FM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. The Commission places conflicting applications into MX groups, resolves the MX groups by applying the NCE comparative procedures, and tentatively selects an application for grant from each separate MX group. Specifically, the Commission compares NCE MX groups under the point system and awards each application a maximum of seven merit points based on public-interest criteria. The application with the most points in an MX group is designated the tentative selectee. The Bureau staff then accepts the tentatively-selected applications for filing, which triggers a 30-day period for the filing of petitions to deny. Petitions based on claims that the exclusion, or inclusion, of challenged or claimed points could alter the outcome in the particular MX group are referred to the Commission for a new points analysis.

3. When the Commission adopted the point system, it considered and rejected proposals to engage in secondary application analyses, whereby it would reevaluate the unsuccessful applications in an MX group that did not directly conflict with the ultimate tentative selectee of the group. The Commission explained that its primary goal was to select the best qualified applicants in an administratively efficient way.

4. The Commission opened a filing window for new NCE stations in 2007, and in 2010, the Commission issued the first of its comparative points orders resolving MX groups from the 2007 window. In the order, the Commission reiterated its policy "that only one application should be granted out of each mutually exclusive group, while providing the competing applicants the opportunity to file again in the next filing window."

5. Several dismissed applicants subsequently challenged their dismissals and argued that their applications should also be granted because they were not mutually exclusive with the tentative selectees in their respective MX groups. The Commission again reaffirmed its one-grant policy in three 2015 Memorandum Opinions and Orders, rejecting petitioners' requests for secondary grants. The Commission explained that its policy basis not to engage in secondary grants was supported by the dual reasons of not granting inferior applications and promoting administrative efficiency.

6. Finally, in the *2019 NCE Report and Order*, the Commission considered and rejected Discount Legal's suggestion that it adopt a secondary grant practice. The Commission reaffirmed its longstanding one-grant policy. In the Petition, Discount Legal renews the arguments in favor of a secondary grant policy made in its comments.

7. *Discussion.* The Commission dismisses the Petition as repetitive and procedurally defective. On alternative and independent grounds, the Commission denies the Petition as meritless and affirms its longstanding one-grant policy, which is supported by the dual rationales of expeditiously granting high-quality applications and limiting administrative burdens.

8. *High Quality Applications.* The Commission rejects Discount Legal's assertion that the potential disparities between the quality of unsuccessful applicants in an MX group is "irrelevant." The Commission's one-grant policy is designed to encourage the best possible application submissions in every filing window. The current policy creates competitive

pressure toward this end because applicants know that only the best application in an MX group will win.

9. The Commission also rejects Discount Legal's argument that "the idea than an applicant must be dismissed because it is comparatively inferior to an unqualified applicant being dismissed" violates the Supreme Court's holding in *Ashbacker Radio Corp. v. FCC*. The Commission previously considered and rejected this argument in a prior decision affirming the one-grant policy and explained that *Ashbacker* "[does not] require the Commission to engage in secondary analyses of inferior applications simply because they do not conflict with the tentative selectee."

10. *Administrative Burdens*. The Commission rejects Discount Legal's contention that the concern about administrative burdens "does not hold up." Discount Legal does not consider the extensive work required following the issuance of tentative selectee orders. The Commission explains that a tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete. Commission review of any petitions and associated point audits is a weighty and oftentimes lengthy process, requiring extensive analysis to determine the status of every tentative selectee's application and the merits of every petition to deny. If a petition to deny is granted, a new tentative selectee must be chosen, and petitions to deny must again be entertained.

11. The one-grant policy incentivizes applicants to resolve mutual exclusivities through the more expeditious settlement process, thereby accelerating new NCE service to the public. The Commission rejects Discount Legal's argument that it is irrational to allow multiple grants in an MX group in the settlement context but not engage in secondary analysis through the point system. This argument does not account for the fundamentally different nature of the two conflict-resolution methods and the time each process entails.

12. The Commission also rejects the argument that secondary grants would better accomplish the section 152 and 303(g) statutory objectives of efficient and effective radio use. The Commission explains that simply granting as many applications as possible in any given window will not

result in greater long-term efficiency and effectiveness. Rather, the one-grant policy better serves the policy goals of sections 152 and 303(g) by incentivizing better applications as well as cooperative settlements that encourage more intensive and higher quality use of spectrum.

13. *Established One-Grant Policy*. Finally, the Commission's rejects Discount Legal's argument that the one-grant policy was not endorsed by the Commission, but rather, originated with the Bureau staff. The Commission explains that Discount Legal's characterization is directly at odds with the Commission's explicit mandate in the 2001 *NCE Comparative MO&O*, the subsequent Commission decisions stating that the Bureau correctly applied the *NCE Comparative MO&O*, and the Commission's recent reaffirmation of the one-grant policy in the 2019 *Report and Order*. These decisions reflect that it has been, and remains, the resolve of the Commission—not the staff—that the Bureau process applications based on a "one-grant" policy.

Ordering Clauses

14. *It is ordered* that the Petition for Reconsideration filed on March 12, 2020, by Discount Legal *is dismissed*, and alternatively and independently, *is denied*.

15. *It is further ordered* that should no further petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–3 *shall be terminated*, and its docket *closed*.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2020–23306 Filed 12–2–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

**49 CFR Parts 171, 172, 173, 174, 175,
176, 178 and 180**

[Docket No. PHMSA–2017–0108 (HM–2150)]

RIN 2137–AF32

Hazardous Materials: Harmonization With International Standards

Correction

In rule document 2020–06205, beginning on page 27810, in the issue of

Monday, May 11, 2020, make the following correction:

■ On page 27852, in the second column, amendatory instruction 2d is corrected to read as follows:

§ 171.7 [Corrected]

d. Add paragraphs (w)(53), (62), (66), (69), (71), (72), and (75) through (77);

[FR Doc. C1–2020–06205 Filed 12–2–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES11110900000 212]

Endangered and Threatened Wildlife and Plants; Eleven Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce findings that eleven species are not warranted for listing as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the Doll's daisy, Puget Oregonian, Rocky Mountain monkeyflower, southern white-tailed ptarmigan, tidewater amphipod, tufted puffin, Hamlin Valley pyrg, longitudinal gland pyrg, subglobose snake pyrg, the Johnson Springs Wetland Complex population of relict dace, or Clear Lake hitch. However, we ask the public to submit to us at any time any new information relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on December 3, 2020.

ADDRESSES: Detailed descriptions of the bases for these findings are available on the internet at <http://www.regulations.gov> under the following docket numbers:

Species	Docket No.
Doll's daisy	FWS–R5–ES–2020–0066.
Puget Oregonian	FWS–R1–ES–2020–0067.

Species	Docket No.
Rocky Mountain monkeyflower	FWS-R6-ES-2012-0052.
Southern white-tailed ptarmigan	FWS-R6-ES-2012-0023.
Tidewater amphipod	FWS-R5-ES-2020-0068.
Tufted puffin	FWS-R7-ES-2020-0072.
Hamlin Valley pyrg	FWS-R6-ES-2020-0069.
Longitudinal gland pyrg	FWS-R6-ES-2020-0070.
Sub-globose snake pyrg	FWS-R6-ES-2020-0071.
Relict dace	FWS-R8-ES-2020-0113.
Clear Lake hitch	FWS-R8-ES-2020-0112.

Supporting information used to prepare this finding is available by contacting the appropriate person as specified under **FOR FURTHER**

INFORMATION CONTACT. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified

under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Doll's daisy	Eric Schradung, Field Supervisor, New Jersey Field Office, (609) 382-5272.
Puget Oregonian	Brad Thompson, State Supervisor, Washington Fish and Wildlife Office, (360) 753-9440.
Rocky Mountain monkeyflower	Ann Timberman, Acting Field Supervisor, Colorado Ecological Services Field Office, (970) 628-7181.
Southern white-tailed ptarmigan	Ann Timberman, Acting Field Supervisor, Colorado Ecological Services Field Office, (970) 628-7181.
Tidewater amphipod	Julie A. Slacum, Division Chief, Strategic Resource Conservation, Chesapeake Bay Field Office, (410) 573-4595.
Tufted puffin	Stewart Cogswell, Field Supervisor, Anchorage Fish and Wildlife Conservation Office, (907) 271-2787.
Hamlin Valley pyrg, longitudinal gland pyrg, and sub-globose snake pyrg.	Laura Romin, Deputy Field Supervisor, Utah Ecological Services Field Office, (801) 975-3330, ext. 142.
Relict dace	Mark Jackson, Field Supervisor, Reno Fish and Wildlife Office, (775) 861-6300.
Clear Lake hitch	Kim Turner, Acting Field Supervisor, Sacramento Fish and Wildlife Office, (916) 414-6700.

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition for which we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted ("12-month finding"). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. We must publish a notice of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of

Endangered and Threatened Wildlife and Plants (Lists). The Act defines "species" as any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines "endangered species" as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and "threatened species" as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following 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.

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 Service 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.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Doll’s daisy (*Boltonia montana*), Puget Oregonian (*Cryptomastix devia*), Rocky Mountain monkeyflower (*Mimulus gemmiparus*), southern white-tailed ptarmigan (*Lagopus leucura altipetens*), tidewater amphipod (*Stygobromus*

indentatus), tufted puffin (*Fratercula cirrhata*), Hamlin Valley pyrg (*Pyrgulopsis hamlinensis*), longitudinal gland pyrg (*Pyrgulopsis anguina*), sub-globose snake pyrg (*Pyrgulopsis saxatilis*), and Clear Lake hitch (*Lavinia exilicauda chi*) meet the definition of “endangered species” or “threatened species,” we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. Our evaluation may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment forms for the Doll’s daisy, Puget Oregonian, Rocky Mountain monkeyflower, southern white-tailed ptarmigan, tidewater amphipod, tufted puffin, Hamlin Valley pyrg, longitudinal gland pyrg, sub-globose snake pyrg, the Johnson Springs Wetland Complex population of relict dace, and Clear Lake hitch contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at <http://www.regulations.gov> under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for the findings in this document.

Doll’s Daisy

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands to list 404 aquatic, riparian, and wetland species, including *Boltonia montana* (referred to by the common names “Doll’s-daisy” and “doll’s daisy” in the petition; referred to hereafter as Doll’s daisy), as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding in which we announced that the petition contained substantial information indicating listing may be warranted for the species. This document constitutes our 12-month

finding on the April 20, 2010, petition to list Doll’s daisy under the Act.

Summary of Finding

Doll’s daisy is a perennial plant in the Asteraceae family that is known from Augusta County, Virginia; Sussex and Warren Counties, New Jersey; and Dauphin County, Pennsylvania, the latter regarded as a historical occurrence. The species occurs in certain isolated sinkhole ponds that have widely fluctuating water levels, and its life history is adapted to these variable habitat conditions. The species currently occurs in 21 population sites in New Jersey (5 are on land owned or managed by the State, 6 are on private property owned or managed by a conservation organization, and the remaining 10 populations are privately owned) and 22 population sites in Virginia (7 are on U.S. Forest Service land, and the remaining 15 are on private property).

Soil, water, sunlight, pollinator services, and a suitable annual temperature regime are interrelated resource needs required by Doll’s daisy individuals and populations. At the metapopulation scale, the species likely requires some degree of habitat connectivity to maintain viability; however, there is significant uncertainty regarding the degree of connectivity that may be necessary between population sites. We assume there is no natural connectivity between the two extant metapopulations in New Jersey and Virginia.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Doll’s daisy, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the Doll’s daisy’s biological status include habitat modification (as a result of development, agriculture, off-road vehicle use, altered surface hydrology, and groundwater withdrawals) and climate change. There are conservation measures in place that benefit the species. Our species status assessment report for the Doll’s daisy evaluates three plausible future scenarios for the species. In our future condition analysis, scenarios 1 and 3 predict between 3 and 11 populations would have lower resiliencies than the current condition, with the potential under one scenario that changes may result in the extirpation of several low resiliency populations, perhaps causing a loss of redundancy. Under scenario 2, we predict feasible conservation efforts

would improve the condition of 22 populations. Under all scenarios, the species would maintain multiple moderate or high resiliency populations in the New Jersey and Virginia metapopulations; therefore, the species' representation is not predicted to change from the current condition (although we note that the historical extirpation of the Pennsylvania metapopulation may have reduced the species' representation).

Despite impacts from the primary stressors, Doll's daisy has maintained resilient populations throughout its range. Although we predict some continued impacts from these stressors in the future, we anticipate the species will continue to maintain resilient populations throughout the foreseeable future. Therefore, we find that listing the Doll's daisy as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Doll's daisy species assessment and other supporting documents (see **ADDRESSES**, above).

Puget Oregonian

Previous Federal Actions

On March 17, 2008, we received a petition (dated March 13, 2008) from CBD, Conservation Northwest, the Environmental Protection Information Center, the Klamath-Siskiyou Wildlands Center, and Oregon Wild to list 32 species and subspecies of snails and slugs (mollusks), including Puget Oregonian (*Cryptomastix devia*), in the Pacific Northwest as endangered or threatened species under the Act. On October 5, 2011, we published in the **Federal Register** (76 FR 61826) a 90-day finding that the petition presented substantial information indicating that listing the Puget Oregonian under the Act may be warranted. This document constitutes our 12-month finding on the March 13, 2008, petition to list the Puget Oregonian under the Act.

Summary of Finding

The Puget Oregonian is a snail that inhabits moist, conifer-forest habitats that include some level of deciduous tree community composition. The species is most commonly located in stands with bigleaf maple (*Acer macrophyllum*) that occur along stream and river terraces or other habitats with a flat or gentle slope. Within that landscape, the species' habitat niche is near or under bigleaf maple crowns and in, or under, hardwood logs and other woody material, leaf litter, moist talus, and the lowest fronds of western swordfern (*Polystichum munitum*). The

Puget Oregonian is found in the Cascade Range and Puget Trough in Washington, and south into the foothills of the Coast Range and Willamette Valley, in Oregon; the species is recognized as extirpated from British Columbia, Canada.

Most occurrence records for this species come from the Cispus River in Washington on the Gifford Pinchot National Forest, resulting from surveys conducted under the Northwest Forest Plan in areas where U.S. Forest Service projects were being considered. As a result, much of the potential suitable habitat for the Puget Oregonian remains unsurveyed.

The primary stressors affecting the Puget Oregonian include the effects of past, current, and future habitat loss, modification, and fragmentation from forest management, land conversion to agriculture and development, big leaf maple dieback disease, and wildfire. However, the species has been found in areas that had been previously impacted by some of these stressors (forest practices, bigleaf maple dieback disease and wildfire). The best available data provide no information on whether there is a declining or increasing population trend and limited information on whether the range of the species has contracted or expanded in the last century. Ten of the 15 habitat units assessed appear to have high resilience, containing multiple contemporary validated records of this species as well as a high percentage of suitable habitat within the unit and in the immediate and surrounding area. Although the species does not appear to be particularly abundant across its range, and much uncertainty regarding presence of the species in suitable but unsurveyed portions of the range, the snail's distribution across a large area (redundancy), with ten highly resilient populations in four different sub-basins (representation), indicates the species is likely to withstand catastrophic events in one or more sub-basin.

The resources that the Puget Oregonian needs are likely to diminish in quantity and quality over time with future increases in environmental stressors including the effects of climate change, human population growth in the Pacific Northwest, forest management, and bigleaf maple dieback disease. If suitable habitat diminishes as expected, we would anticipate a corresponding decline in the resiliency, redundancy, and representation of the species. However, the Puget Oregonian's current distribution in at least 15 sites across at least four different sub-basins will support its ability to maintain resiliency into the mid-21st century.

Furthermore, the species' ability to take refuge in small areas (microhabitat) could add to the future resiliency of populations.

We know that features of the species' habitat may change in the future, and we can project the scope and magnitude of some of those environmental changes. However, our incomplete understanding of how the species may respond to changes in its environment over time creates a wide range of possibilities for the future condition of the 15 analytic units we assessed. The best available information does not indicate that the future magnitude and scope of potential environmental stressors would be at a level that would cause the species to be in danger of extinction in the foreseeable future.

Therefore, we find that listing the Puget Oregonian as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Puget Oregonian species status assessment and other supporting documents (see **ADDRESSES**, above).

Rocky Mountain Monkeyflower

Previous Federal Actions

On October 4, 2011, we received a petition from WildEarth Guardians requesting, in part, that we list the Rocky Mountain monkeyflower as an endangered or threatened species under the Act. On August 29, 2012, we published in the **Federal Register** (77 FR 52293) a 90-day finding that the petition presented substantial information indicating that listing the Rocky Mountain monkeyflower under the Act may be warranted. This document constitutes our 12-month finding on the September 30, 2011, petition to list the Rocky Mountain monkeyflower under the Act.

Summary of Finding

The Rocky Mountain monkeyflower, also known as the budding monkeyflower, is a small, narrow endemic plant found in north-central Colorado. Uniquely, this plant exhibits an asexual reproduction strategy not seen within the *Mimulus* genus or in any other Holarctic species; the plant produces propagules which contain "bulbils," which have all of the components needed to develop into a new plant, including a shoot axis and rudimentary leaves and roots. The Rocky Mountain monkeyflower occupies approximately 60 acres (24.28 hectares) on State or Federal lands managed by the U.S. Forest Service, the National Park Service, and Colorado

Parks and Wildlife in Boulder, Clear Creek, Grand, Jefferson, and Larimer Counties in Colorado. Currently, we know of 24 occurrences of the Rocky Mountain monkeyflower that constitute 19 populations; surveyors have observed over 14 million ramets (ramets are individuals that result from asexual reproduction and thus may be genetically identical).

The Rocky Mountain monkeyflower inhabits montane to subalpine habitats at elevations of 2,400 to 3,400 meters (7,874 to 11,154 feet) and is found under overhangs of south-facing cliffs or boulders. Little information exists about the ecological factors that affect growth and establishment of the Rocky Mountain monkeyflower in the wild. The survival of propagules is strongly influenced by moisture, temperature, and substrate type. A number of patterns are apparent in the few available studies on habitat parameters; all of the previous studies and species descriptions suggest that periods of very moist or saturated soil are important, but it appears that too much water can be problematic for this species. The optimal hydrological conditions are sites that are periodically saturated or, at most, consistently moist with no long periods of standing water. Similarly, successful sites have very shallow soil, typically fewer than two centimeters deep.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Rocky Mountain monkeyflower, and we evaluated all relevant stressors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. We identified climate change as the primary stressor affecting the Rocky Mountain monkeyflower's biological status. Currently, the Rocky Mountain monkeyflower has multiple, resilient populations distributed across its range, encompassing various ecological conditions and some genetic variation. While the Rocky Mountain monkeyflower is a narrow endemic plant with low population sizes and a limited range, this limitation does not seem to be currently compromising the species' resiliency, redundancy, and representation, given the relatively large numbers of ramets in multiple populations, the low risk of inbreeding depression due to the plant's asexual reproduction, good or moderate hydrological conditions in most populations, and relatively high levels of genetic diversity for an asexual species. The species is only known to occur on Federal and State public lands,

which minimizes many threats such that there are no stressors currently providing species-level impacts. In the future, while we may lose some small Rocky Mountain monkeyflower populations, we project that each analysis unit will likely remain occupied. Moreover, in all projected future scenarios, the three populations containing over 90 percent of monkeyflower ramets will be in good or moderate condition. Furthermore, the plant's asexual reproduction strategy confers, and likely would continue to confer, additional resiliency because this less energy-intensive method of reproduction allows the species to reproduce in relatively harsh conditions. Thus, based on our analysis, we anticipate that the Rocky Mountain monkeyflower will continue to have multiple, resilient populations distributed across its narrow range, providing for limited but sufficient redundancy and representation necessary to withstand catastrophic events and adapt to environmental change into the future.

Therefore, we find that listing the Rocky Mountain monkeyflower as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Rocky Mountain monkeyflower species assessment and other supporting documents (see **ADDRESSES**, above).

Southern White-Tailed Ptarmigan

Previous Federal Actions

On August 24, 2010, we received a petition from CBD requesting that we list either the U.S. population or the Rocky Mountain population of the white-tailed ptarmigan as threatened or endangered distinct population segments (DPSs) and that we designate critical habitat. Following our correspondence with the petitioner regarding the accepted taxonomy of the white-tailed ptarmigan and our DPS policy, the petitioner revised the petition on September 1, 2011. The revised petition requested that we list the southern white-tailed ptarmigan (*L. l. altipetens*) and the Mt. Rainier white-tailed ptarmigan (*L. l. rainierensis*) as threatened subspecies. On June 5, 2012, we published in the **Federal Register** (77 FR 33143) a 90-day finding that the petition presented substantial information that listing may be warranted for the southern white-tailed ptarmigan and the Mt. Rainier white-tailed ptarmigan. This document constitutes the 12-month finding on the September 1, 2011, petition to list the southern white-tailed ptarmigan under

the Act. We will address our finding for the Mt. Rainier white-tailed ptarmigan in a future determination.

Summary of Finding

The southern white-tailed ptarmigan is a small bird that lives in high-elevation, alpine ecosystems in Colorado, northern New Mexico, and historically in the Snowy Range of southern Wyoming. Alpine ecosystems are characterized by high winds, cold temperatures, short growing seasons, low atmospheric oxygen concentrations, and intense solar radiation. The southern white-tailed ptarmigan is one of five subspecies of white-tailed ptarmigan in the Phasianidae family, subfamily Tetraoninae, which includes the grouse, or ground-feeding game birds. So named for its perpetually white tail feathers, the southern white-tailed ptarmigan changes its plumage seasonally to match the coloration and patterns of its alpine habitats, from white in winter to brown in the summer, effectively camouflaging the birds against snow and alpine rocks and vegetation. In addition to cryptic coloration, the southern white-tailed ptarmigan displays other adaptations to the temperature, precipitation, wind, and snow cover extremes of its alpine habitats. For example, heavily feathered feet support the southern white-tailed ptarmigan like snowshoes as they walk across the snow, and the subspecies feeds almost exclusively on willow buds during the winter when other food sources are scarce.

Nearly all suitable habitat for the southern-white tailed ptarmigan occurs on lands managed by Federal land management agencies, with over 85 percent managed by the U.S. Forest Service, over 5 percent managed by the National Park Service, and 4.5 percent managed by the Bureau of Land Management. Approximately 6 percent of suitable habitat is located on privately owned land. The distribution of southern white-tailed ptarmigan is largely unchanged from historical levels in Colorado and New Mexico, but a lack of recent observations indicates that the subspecies is presumed extirpated from the Snowy Range in southern Wyoming.

We determined that individual southern white-tailed ptarmigan have specific habitat needs to breed, feed, and shelter, including suitable winter snow conditions, available late-lying snowfields, summer precipitation and monsoonal moisture, brood-rearing habitat, and willows. We also determined that populations of southern white-tailed ptarmigan need external recruitment of immigrants, breeding dispersal, adult female survival, and

population growth in order to be resilient. Demographic connectivity between populations is critical for resiliency, as it allows for genetic exchange, dispersal, and external recruitment. The subspecies needs a sufficient number and distribution of resilient populations to withstand the annual variation in its environment, catastrophes, and novel biological and physical changes in its environment.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the southern white-tailed ptarmigan, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. Potential stressors to the southern white-tailed ptarmigan include predation, mining and related poisoning due to toxic concentrations of trace metals, hunting, recreation, livestock and native ungulate grazing, and the effects of global climate change. Through our analysis, we found that only climate change may affect southern white-tailed ptarmigan populations due to increases in minimum and maximum temperatures; changes in snow quantity, quality, extent, and duration; shifts in plant phenology; advancement of treeline, and expansion of willow into alpine areas; and changes in the amount and timing of seasonal precipitation. Although the other stressors may affect individuals or local areas, they do not affect resiliency, redundancy, or representation, alone or cumulatively, currently or into the future for the southern white-tailed ptarmigan.

Currently, 14 out of 19 analytical units (a scale of analysis similar to populations) have high resiliency, 3 have medium resiliency, 1 in New Mexico has very low resiliency, and the Snowy Range analytical unit in Wyoming is presumed extirpated. Other than local declines in New Mexico and the presumed extirpation in the Snowy Range, the southern white-tailed ptarmigan currently occupies nearly all of its historical range, and the subspecies has sufficient resiliency, redundancy, and representation to withstand stochastic and catastrophic events and to adapt to environmental changes. Therefore, given the current levels of resiliency distributed across Colorado, the lack of significant stressors, and the life-history characteristics of the subspecies that make it uniquely adapted to the environmental extremes of its alpine habitats, we conclude that the current risk of extinction is low. In the future, we project reductions in resiliency, due

to changes in climate, with a minor reduction in redundancy and representation if the analytical unit in New Mexico declines from very low resiliency to an extirpated condition. However, at least 17 resilient analytical units are projected to remain distributed across Colorado in the future, so the subspecies maintains enough resiliency, redundancy, and representation to withstand stochastic and catastrophic events and to adapt to changing conditions. Therefore, we consider the future risk of extinction to also be low.

We find that listing the southern white-tailed ptarmigan as an endangered subspecies or a threatened subspecies under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the southern white-tailed ptarmigan species assessment and other supporting documents (see **ADDRESSES**, above).

Tidewater Amphipod

Previous Federal Actions

We identified the tidewater amphipod as a Category 2 candidate species for listing in a May 22, 1984, notice of review (49 FR 21664). Category 2 candidate species were taxa for which the Service had information indicating that proposing to list the species as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not at that time available to support proposed rules. The tidewater amphipod remained designated as a Category 2 candidate species in subsequent candidate notices of review (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, notice (61 FR 7596), we discontinued the designation of Category 2 species as candidates, which removed the tidewater amphipod from our candidate list.

On April 20, 2010, we received a petition from CBD, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands to list 404 aquatic, riparian, and wetland species, including the tidewater amphipod, as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding in which we announced that the petition contained substantial information indicating listing may be warranted for the species. This document constitutes our 12-month finding on the April 20, 2010, petition to list the tidewater amphipod under the Act.

Summary of Finding

The tidewater amphipod is a small, subterranean, shallow groundwater crustacean. Compared to similar amphipods, the tidewater amphipod is relatively large, with males reaching lengths of 9.7 millimeters (mm) (0.38 inches (in)) and females 8.2 mm (0.32 in). The species' entire known current distribution occurs within five counties in Maryland and seven counties in Virginia spanning a distance of 180 miles (289 kilometers) of the Coastal Plain physiographic region. Contemporary collections of tidewater amphipods have typically been made during the winter and spring months when individuals can be found in seepage springs, tile drains, and shallow wells.

Specific diet, water quality and quantity tolerances, and behavioral and reproductive traits of tidewater amphipod are unknown. However, based on the general principles of conservation biology, information about other groundwater amphipod species, and local information from the areas where tidewater amphipods have been observed, we infer that individuals need shallow water habitats with sufficient space to breed and shelter; sufficient water quality for breeding and sheltering; forest cover, which provides a buffer for water quality and quantity, and provides food; and a clay or confining layer or pore space to help support feeding and sheltering when water quantities are low.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the tidewater amphipod, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the tidewater amphipod's biological status include reduced groundwater quality and quantity, and we identified development (*i.e.*, impervious surfaces) as a primary source of changes to both. In response to degraded water quality, we conclude there could be decreased fitness and declines in the tidewater amphipod's resiliency caused by changes in biodiversity within its habitats. In response to the greater threat of reduced water quantity, there is evidence that the tidewater amphipod can burrow deeper underground for periods of time and reemerge when sufficient water levels return. While representation is assumed to have decreased when compared to historical conditions, it appears the species has

sustained multiple populations across much of its historical range and through multiple stochastic events such as drought. Considering the future scenarios, the majority of populations do not appear to be at high risk of development, and the impact to the species caused by impervious surfaces is not projected to increase substantially. Thus, the primary threats appear to have low imminence and magnitude such that they are not providing species-level impacts to the tidewater amphipod. We evaluated numerous other factors (e.g., climate change, effects of small population size, collection, predation, disease, recreation, forest management, and other conservation efforts) and determined that they had little to no measurable impact on the species. The species status assessment report describes many uncertainties in the species' occurrence, populations, and response to threats, but, considering the available data, the risk of extinction is low.

Therefore, we find that listing the tidewater amphipod as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the tidewater amphipod species assessment and other supporting documents (see **ADDRESSES**, above).

Tufted Puffin

Previous Federal Actions

On February 14, 2014, we received a petition from the Natural Resources Defense Council (NRDC) to list the contiguous U.S. DPS of tufted puffin as an endangered or threatened species under the Act. Alternatively, the NRDC stated that we should list the tufted puffin species (i.e., the entire population(s) across its known range) and apply this alternative if we found the contiguous U.S. population of the species did not meet our DPS policy. On September 18, 2015, we published in the **Federal Register** (80 FR 56423) a 90-day finding in which we announced that the petition contained substantial information indicating listing may be warranted for the contiguous U.S. DPS of tufted puffin in the States of Washington, Oregon, and California. The 90-day finding neglected to make a determination specific to the NRDC's alternative listing request. This document constitutes our 12-month finding on the February 14, 2014, petition to list the tufted puffin (addressing both petitioned entities) under the Act.

Summary of Finding

The tufted puffin is a widely distributed pelagic seabird found in the North Pacific Ocean. The tufted puffin is a burrow-nester that commonly nests colonially on offshore islands. Tufted puffins nest along the coasts of California, Oregon, Washington, and Alaska in the United States, and in Canada (British Columbia), Russia, and Japan. The majority of tufted puffins (82 percent) nest in North America, primarily Alaska; Russia has the second largest concentration of nesting tufted puffins (18 percent). Colony size is variable, ranging from just a few birds to large colonies of greater than 100,000 tufted puffins.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the tufted puffin, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. We determined that the most significant threats impacting the tufted puffin and its habitat are changing climate conditions, oil spills, fisheries bycatch, mammalian and avian predators, nonnative plants and animals, and human disturbance. The most significant of these threats to potentially impact the resource needs of tufted puffins are climate change and oil spills. Currently, the best available information for tufted puffins indicates adequate redundancy and representation across the species' range, including robust populations across the majority of its range. The species continues to occur throughout its historical range. While the tufted puffin's range will likely continue to contract in the south due to climate change, models predict the species will continue to remain widely distributed throughout most of its historical range. The tufted puffin is expected to maintain resilient colonies throughout a large proportion of its range, including likely continued representation across most of its range.

Therefore, we find that listing the contiguous U.S. DPS of tufted puffin or the tufted puffin species as endangered or threatened is not warranted. A detailed discussion of the basis for this finding can be found in the tufted puffin species assessment and other supporting documents (see **ADDRESSES**, above).

Hamlin Valley Pyrg, Longitudinal Gland Pyrg, Sub-Globose Snake Pyrg

Previous Federal Actions

On July 30, 2007, we received a petition (dated July 24, 2007) from

Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our Mountain Prairie Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened. This petition included the Hamlin Valley pyrg, longitudinal gland pyrg, and sub-globose snake pyrg. On February 27, 2009, we received another petition dated February 17, 2009, from the CBD, Tierra Curry, Noah Greenwald, Dr. James Deacon, Don Duff, and the Freshwater Mollusk Conservation Society, requesting that we list 42 species of Great Basin springsnails in Nevada, Utah, and California, including the Hamlin Valley pyrg, longitudinal gland pyrg, and sub-globose snake pyrg, as endangered or threatened, and designating critical habitat under the Act. On August 18, 2009, we published in the **Federal Register** (74 FR 41649) a 90-day finding in which we announced that the petitions contained substantial information indicating listing these three species may be warranted. This document constitutes the 12-month finding on the July 30, 2007, and February 17, 2009, petitions to list the Hamlin Valley pyrg, longitudinal gland pyrg, and sub-globose snake pyrg under the Act.

Summary of Finding

The three springsnail species are in the genus *Pyrgulopsis* of the Hydrobiidae family. In general, the three species are morphologically similar with hardened shells and soft anatomy, and they are differentiated based on subtle morphological characteristics. The Hamlin Valley pyrg occurs only in the White Rock Cabin Springs province in Hamlin Valley, straddling the Utah and Nevada State line. The Utah portion of the spring province is all on private land, while the Nevada portion is entirely within the White Rock Range Wilderness Area managed by the Bureau of Land Management (BLM). The longitudinal gland pyrg occurs on private land at three springs or spring provinces (Big Springs province, Stateline Springs province, and Clay Spring) in the Snake Valley area of White Pine County, Nevada, and Millard County, Utah. The sub-globose snake pyrg occurs only in Utah at Gandy Warm Springs in Snake Valley, contained entirely within the Gandy Mountain Caves Area of Critical Environmental Concern managed by the BLM.

All three springsnails are very small in size, only a few millimeters in length

and width, and have limited ability or tendency to move. These species are herbivores or detritivores that primarily graze on the periphyton (freshwater organisms attached or clinging to plants) of exposed surfaces of aquatic plants and substrates in the small springs they inhabit. We determined the following spring conditions are most critical in influencing the physical and biological needs of springsnails: Sufficient water quality, adequate substrate and vegetation, free-flowing water, and adequate spring discharge. When each of these physical and biological needs is present and functioning within a spring, stable populations of springsnails are expected.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the springsnails, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. Historically and through the present, the three springsnail species and their habitats were impacted to varying degrees by predation and competition, vegetation and soil disturbance, water pollution, spring modification, and groundwater pumping. However, we determined the most important stressors likely to impact future conditions of the three species include groundwater pumping and withdrawals, altered precipitation and temperature, and, in the case of the sub-globose snake pyrg, nonnative fish competition.

The Hamlin Valley pyrg occurs in one population with 10 of 11 occupied springbrooks in high overall resiliency condition and one springbrook in moderate condition; resiliency is high in all but one springbrook due to high abundance despite some environmental stressors. Redundancy and representation are limited due to the species' narrow range and its single population; however, this is likely similar to historical conditions. Therefore, we conclude that the current risk of extinction is low. In the future, we project the Hamlin Valley pyrg population to have high resiliency due to predicted high abundance and protection of the water source from pumping due to wilderness designation of groundwater areas upslope of the spring province. Redundancy and representation are projected to continue to be limited due to the species' narrow range and only one population, but this is likely similar to historical conditions for this narrow endemic species. In the future, we expect the species' habitat to continue to provide for the needs of

sufficient water quality, adequate substrate and vegetation, free-flowing water, and adequate spring discharge. Additionally, we consider the future risk of catastrophic or stochastic events affecting this species or its habitat to be low.

The longitudinal gland pyrg currently occurs in three locations with 13 occupied springbrooks in high overall resiliency condition, 5 springbrooks in moderate condition, and only 1 springbrook in low condition. Resiliency is high in most springbrooks due to high abundance despite some environmental stressors. Competition and predation, spring modification, and vegetation and soil disturbance from grazing and roads are the only historical and current stressors. Because most populations exhibit high resilience despite the co-occurrence of stressors, we concluded that the stressors have a low to moderate effect on the longitudinal gland pyrg. Current abundance, range, and effects of stressors make it unlikely there would be a loss in redundancy or representation, and we expect the redundancy and representation to be adequate. Therefore, we conclude that the current risk of extinction is low. In the future, we project that the longitudinal gland pyrg will continue to have populations with high resiliency due to predicted high abundance despite the future effects of environmental stressors and because groundwater pumping is unlikely to occur in the foreseeable future. Redundancy and representation are projected to continue to be adequate in the future with three occupied spring systems with multiple occupied springbrooks. In the future, we expect the species' habitat to continue to provide for the needs of sufficient water quality, adequate substrate and vegetation, free-flowing water, and adequate spring discharge. Additionally, we consider the future risk of catastrophic or stochastic events affecting this species or its habitat to be low.

The sub-globose snake pyrg currently occurs in one spring system with multiple springbrooks in the upper reaches of the spring system in moderate resiliency condition. The spring system is a warm water system with temperatures greater than 25 degrees Celsius (77 degrees Fahrenheit). The population appears to be resilient to environmental stressors; however, numbers of snails are down overall due to the recent invasion of armored catfish into the lower reaches of the system, which is the only current threat to the species. The upper reaches of the

system still have high numbers of snails and a low probability of armored catfish invasion. The BLM, Utah Division of Wildlife Resources, and the Service entered into the Conservation Agreement and Strategy for the Sub-globose Snake Pyrg (Agreement) in 2020. We evaluated the certainty that the conservation measures in the Agreement will be implemented and effective in our Policy for the Evaluation of Conservation Efforts (PECE) analysis. Using the criteria specified in PECE (68 FR 15100, March 28, 2003), we have determined that all of the PECE criteria have been satisfied. We find that the 2020 CAS has a high level of certainty for future implementation and certainty of the effectiveness. Nonnative fish removal efforts under the strategy have already begun to reduce armored catfish numbers in Gandy Warm Springs. Current redundancy and representation are limited due to the narrow range of the species and its single population, but this is likely similar to historical conditions. Therefore, we conclude that the current risk of extinction is low. Our assessment of the future status of this species takes into consideration the Agreement, which includes the continuation of conservation actions to eliminate nonnative fish from Gandy Warm Springs and prevent future invasion, thereby addressing this threat to the species. Future resiliency is expected to increase due to the removal of nonnative fish in accordance with the Agreement, the fact that groundwater pumping is unlikely, and the species' past ability to sustain itself despite other environmental stressors. Redundancy and representation are projected to continue to be limited in the future due to the species' narrow range and its single population, but this is likely similar to historical conditions. In the future, we expect the species' habitat to continue to provide for the needs of sufficient water quality, adequate substrate and vegetation, free-flowing water, and adequate spring discharge. Additionally, we consider the future risk of catastrophic or stochastic events affecting the sub-globose snake pyrg or its habitat to be low.

Therefore, we find that listing the Hamlin Valley pyrg, longitudinal gland pyrg, and sub-globose snake pyrg as endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Hamlin Valley pyrg, longitudinal gland pyrg, and sub-globose snake pyrg species assessment and other supporting documents (see **ADDRESSES**, above).

Johnson Springs Wetland Complex Population of Relict Dace

Previous Federal Actions

On June 27, 2014, we received a petition from Forest Service Employees for Environmental Ethics, requesting that the Johnson Springs Wetland Complex Population (JSWC) population of relict dace be listed as an endangered DPS under the Act. On April 10, 2015, we published a 90-day finding (80 FR 19259) that the petition presented substantial information indicating that listing the JSWC population of relict dace may be warranted and that we were initiating a status review. This document constitutes our 12-month finding on the June 27, 2014 petition to list the JSWC population of relict dace under the Act.

Summary of Finding

The relict dace is a small fish in the Cyprinidae family that was first described in 1972 (Hubbs and Miller 1972, pp. 101–102). It is found in spring systems in five isolated valleys in the northeastern corner of Nevada; these valleys are estimated to have been separated for hundreds of thousands of years. Four of these valleys contain native populations, including the JSWC, and one includes only introduced populations.

Waterbodies occupied by the species include springs, spring pools, and spring outflows; wetlands; natural and human-modified channels; ditches; ephemeral reservoirs; and creeks. The relict dace feeds on aquatic invertebrates, including mayfly and damselfly nymphs; they consume relatively little plant material (Carmichael 1983, p. 88). Little is known about relict dace breeding or behavior; however, the species is considered secretive (NDOW 2007, p. 4).

We have carefully assessed the best scientific and commercial information available regarding whether the JSWC population of relict dace qualifies as a DPS. Based on our thorough review, we find that the JSWC population of relict dace meets our criteria for discreteness under our February 7, 1996 DPS policy (61 FR 4722); however, it does not meet the criteria for significance based on the four criteria outlined in the DPS policy. The JSWC population of relict dace does not occur in a unique or unusual setting for relict dace, does not show evidence that loss of the discrete population segment would result in a significant gap in the range of relict dace, and does not represent the only surviving native occurrence of relict dace. While genetic discontinuity demonstrates the JSWC population segment is markedly

separate from other relict dace populations, we find no evidence that these measures of genetic divergence result in marked differences in the JSWC population segment's genetic characteristics. Therefore, the JSWC relict dace population is not a listable entity under the Act. Because the JSWC population of relict dace is not a listable entity, we did not perform a status assessment under the five factors as required under section 4(a) of the Act. This finding constitutes our completion of our review of the petitioned action.

A detailed discussion of the basis for this finding can be found in the JSWC population of relict dace species assessment and other supporting documents (see **ADDRESSES**, above).

Clear Lake Hitch

Previous Federal Actions

We received a petition from the Center for Biological Diversity on September 25, 2012 (CBD 2012, entire), to list the Clear Lake hitch as threatened or endangered under the Act. The Service issued a 90-day finding on April 10, 2015 (80 FR 19259), stating the petition presented substantial information that listing the Clear Lake hitch may be warranted and that we were initiating a status review. This document constitutes the 12-month finding on the September 25, 2012, petition to list the Clear Lake hitch.

Summary of Finding

The Clear Lake hitch (hitch) (*Lavinia exilicauda chi*) is a large cyprinid (freshwater minnow) that is endemic to the Clear Lake watershed in Lake County, California. Historically, the Clear Lake hitch occurred in several lakes and ponds found throughout the Clear Lake watershed, including: Clear Lake, Thurston Lake, Upper Blue Lake, Lower Blue Lake, and Lampson Pond. During the spring, Clear Lake hitch were also found in the numerous tributaries to these larger water bodies, including: Kelsey, Scott, Middle, Adobe, Seigler Canyon, Manning, Cole, Morrison, and Schindler Creeks. All of the waterbodies, listed above, with the exception of Thurston Lake, were hydrologically connected to each other in the past, and it appears that Thurston Lake and its tributary, Thurston Creek, have always been isolated from the other waterways. Local opinion is that hitch were introduced into Thurston Lake by a local resident less than 50 years ago. The Clear Lake hitch is restricted to the Clear Lake watershed in Lake County, California, in the central Coast Range Mountains. Currently, the hitch is thought to be extirpated from

the Blue Lakes, but still occurs in Clear and Thurston Lakes throughout the year. In the spring, reproductive adults migrate into tributary streams to spawn and then migrate back to the lakes after spawning. It is unclear whether Lampson Pond still exists; therefore, the status of the Clear Lake hitch in Lampson Pond is unknown.

For most of the year, Clear Lake hitch are only found within their lacustrine (lake) environment. However, between February and May, a portion of the overall reproductive population begins to migrate into the surrounding tributaries to spawn. Spawning activities include one to five males pursuing a gravid female to fertilize her freshly extruded eggs, which are deposited on fine to medium sized gravel within the tributary stream. Fertilized eggs develop and hatch within 7 to 10 days, fry are free-swimming after another 7 to 10 days, and young migrate to the lake at about a month old before the streams dry up. Juvenile hitch are found within the nearshore habitat of the lake where they depend on submerged aquatic vegetation for cover and prey. Juvenile hitch move from the nearshore portion of the lake into open water in early-to late-fall. There is evidence that Clear Lake hitch do not require tributary streams with gravel to spawn, but can also spawn successfully in different portions of the lake (*i.e.*, along the shore, the mouths of tributaries, and Rodman Slough) that lack a gravel substrate.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Clear Lake hitch, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the Clear Lake hitch's biological status include habitat degradation, predation and competition, drought and climate change. Based on our examination of the best available scientific information, we have determined that habitat degradation, predation and competition, drought and climate change are not likely to adversely affect the overall viability of the Clear Lake hitch in a biologically meaningful way to such an extent that the species is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range for the following reasons: (1) The Clear Lake hitch has a long life span, (2) the Clear Lake hitch are highly fecund, and (3) the Clear Lake hitch has shown the ability to use different spawning strategies, which

demonstrates its behavioral flexibility to variable environmental conditions. Additionally, regulatory mechanisms such as the California Endangered Species Act (CESA) and local ordinances are currently acting to ameliorate the severity of some existing threats, such as the take of individuals, degradation of tributary streams, and loss of wetland habitat surrounding Clear Lake. Furthermore, the SSA presented three plausible future scenarios, which included various states of potential future conditions for the species. Our analysis of these scenarios indicates that the Clear Lake hitch will maintain its current resiliency, representation, or redundancy, or undergo only a slight decrease in condition into the foreseeable future. Even under a projection of a slight decrease in future condition, the Clear Lake hitch was not projected to be in danger of extinction in the next 50 years.

Therefore, we find that listing the Clear Lake hitch as an endangered or threatened species under the Act is not warranted at this time. A detailed discussion of the basis for this finding can be found in the Clear Lake hitch species assessment form and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Doll's daisy, Puget Oregonian, Rocky Mountain monkeyflower, southern white-tailed ptarmigan, tidewater amphipod, tufted puffin, Hamlin Valley pyrg, longitudinal gland pyrg, sub-globose snake pyrg, the Johnson Springs Wetland Complex population of relict dace, or Clear Lake hitch to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

A list of the references cited in this petition finding is available on the internet at <http://www.regulations.gov> in the appropriate docket provided above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–26139 Filed 12–2–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 201125–0321]

RIN 0648–BJ59

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

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

ACTION: Final rule.

SUMMARY: This final rule modifies Federal permit conditions and imposes participation requirements for certain federally permitted vessels when fishing for Pacific cod in state waters adjacent to the exclusive economic zone of the Bering Sea and Aleutian Islands during the State of Alaska's parallel Pacific cod fishery. This action is necessary to enhance Federal conservation, management, and catch accounting measures previously adopted by the North Pacific Fishery Management Council (Council) regarding license limitation, sector allocations, and catch reporting. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Effective January 4, 2021.

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action (referred to as the "Analysis") are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907–586–7210.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Groundfish of the BSAI Management Area (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

NMFS published the proposed rule for these regulatory amendments in the **Federal Register** on September 18, 2020 (85 FR 58322). A summary of comments on the proposed rule and NMFS' responses are provided in the Comments and Responses section of this preamble.

Summary of This Action

In this rule, NMFS modifies Federal permit conditions and imposes participation requirements for certain federally permitted vessels when fishing for Pacific cod in State of Alaska waters (state waters) adjacent to the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI). The state waters portion of the Pacific cod fishery that runs concurrent with the Federal Pacific cod fishery is commonly known as the State's parallel fishery.

Throughout this preamble, "state waters" refers to the maritime waters from 0 to 3 nautical miles off Alaska, and "EEZ" and "Federal waters" are used interchangeably and refer to the maritime waters from 3 to 200 nautical miles off Alaska. In addition, "parallel fisheries" in this preamble refers to the state waters Pacific cod parallel fisheries in the State of Alaska Bering Sea-Aleutian Islands Area, which presently is in the Dutch Harbor Subdistrict of the Bering Sea and within the Aleutian Islands Subdistrict of the Aleutian Islands, respectively.

This rule prohibits (1) a hook-and-line, pot, or trawl gear vessel named on a Federal Fisheries Permit (FFP) or License Limitation Program (LLP) license from being used to catch and retain BSAI Pacific cod in State of Alaska (State) waters adjacent to the BSAI during the State's parallel Pacific cod fishery unless the vessel is named on an FFP and LLP license that have the required endorsements; (2) a hook-and-

line, pot, or trawl gear vessel named on an FFP or LLP license from catching and retaining Pacific cod in state waters adjacent to the BSAI EEZ during the State's parallel fishery when NMFS has closed the EEZ to directed fishing for Pacific cod by the sector to which the vessel belongs; (3) the holder of an FFP with certain endorsements from modifying those endorsements during the effective period of the FFP; and (4) the reissuance of a surrendered FFP with certain endorsements for the remainder of the three-year term, or cycle, of FFPs.

Summary of Management of the Fishery

This section briefly describes the Federal BSAI Pacific cod fishery, including the Pacific cod fisheries that occur in BSAI state waters. More detailed descriptions, including a review of this rule and the rationale for the regulations, are provided in the preamble to the proposed rule (85 FR 58322, September 18, 2020) and in the Analysis (see **ADDRESSES**).

Vessels that harvest Pacific cod in the BSAI use both trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Additionally, BSAI Pacific cod vessels operate as catcher

vessels that harvest and deliver the fish for processing, or as catcher processors that harvest and process the catch on board. The amount of BSAI Pacific cod available for commercial harvest is determined through an annual harvest specifications process (*e.g.*, 83 FR 13553, March 9, 2020). This process accounts for Pacific cod harvested in guideline harvest level (GHL) fisheries that occur only within state waters and are managed by the State of Alaska. After deducting for harvests in the GHL fisheries, Pacific cod Total Allowable Catches (TACs) are set for the Federal fisheries in the Bering Sea and Aleutian Islands subareas.

Once the Bering Sea and Aleutian Islands TACs are established, regulations at § 679.20(a)(7)(i) allocate 10.7 percent of the Bering Sea Pacific cod TAC and 10.7 percent of the Aleutian Islands Pacific cod TAC to the Community Development Quota (CDQ) Program for exclusive harvest by Western Alaska CDQ groups. Section 305(i) of the MSA specifies the methods for allocating these harvest privileges. Once allocated, CDQ groups must ensure that they do not exceed their allocations.

The portion that remains after subtraction of the CDQ allocation from each TAC is the initial TAC (ITAC) for the Bering Sea and Aleutian Islands. NMFS combines the Bering Sea ITAC and the Aleutian Islands ITAC into one, BSAI non-CDQ Pacific cod TAC. This combined BSAI non-CDQ Pacific cod TAC is then allocated among, and available for harvest by, nine non-CDQ fishery sectors. Regulations at § 679.20(a)(7)(ii)(A) define the nine non-CDQ fishery sectors and specify the percentage of the BSAI non-CDQ Pacific cod TAC allocated to each. The non-CDQ fishery sectors are defined by a combination of gear type (*e.g.*, trawl, hook-and-line), operation type (*i.e.*, catcher vessel or catcher/processor), and vessel size categories (*e.g.*, vessels greater than or equal to 60 feet (ft) in length overall or less than 60 ft in length overall). Through the annual harvest specifications process, NMFS allocates an amount of the BSAI non-CDQ Pacific cod TAC to each of the nine non-CDQ fishery sectors. The nine non-CDQ fishery sectors and the percentage of the BSAI non-CDQ Pacific cod TAC allocated to each sector are shown in Table 1 below.

TABLE 1—ALLOCATIONS OF THE BSAI NON-CDQ PACIFIC COD TAC TO THE NON-CDQ FISHERY SECTORS

Non-CDQ fishery sector	Percentage allocation of the BSAI non-CDQ TAC
Hook-and-line catcher vessels greater than or equal to 60 ft length overall (LOA)	0.2
Jig gear	1.4
Pot catcher/processors	1.5
Hook-and-line and pot catcher vessels less than 60 ft LOA	2.0
American Fisheries Act (AFA) trawl catcher/processors	2.3
Pot catcher vessels greater than or equal to 60 ft LOA	8.4
Non-AFA trawl catcher/processors (Amendment 80 catcher/processors)	13.4
Trawl catcher vessels	22.1
Hook-and-line catcher processors	48.7

NMFS manages each of the fishery sectors to ensure harvest of Pacific cod does not exceed the sector's annual allocation. NMFS monitors harvests that occur by vessels being used to conduct directed fishing for Pacific cod (that is, participants who are specifically targeting and retaining Pacific cod above specific threshold levels) and harvests that occur by vessels being used to conduct directed fishing for other species and incidentally catching Pacific cod (*e.g.*, the incidental catch of Pacific cod in the directed pollock fishery). Section 679.2 provides the regulatory definition of "directed fishing." For the non-AFA trawl catcher/processor sector, also known as the Amendment 80 sector, NMFS

allocates exclusive harvest privileges to participants within that sector that cannot be exceeded. For the other non-CDQ fishery sectors, NMFS carefully tracks both directed and incidental catch of Pacific cod. An allocation to a non-CDQ fishery sector may be harvested in either the Bering Sea or the Aleutian Islands, subject to the Pacific cod ITAC specified for the Bering Sea or the Aleutian Islands. NMFS takes appropriate management measures, such as closing directed fishing for a fishery sector, to ensure that total directed fishing and incidental fishing harvests do not exceed that sector's allocation. Section 2.7 of the Analysis describes NMFS' management of the non-CDQ fishery sectors.

Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by season dates established at § 679.23(e)(5). In general, regulations apportion CDQ and non-CDQ fishery sector allocations among three seasons that correspond to the early (A-season), middle (B-season), and late (C-season) portions of the year. The specific season dates established for the CDQ Program and each of the non-CDQ fishery sectors were provided in the final 2020 and 2021 harvest specifications for groundfish of the BSAI (83 FR 13553, March 9, 2020). Depending on the specific CDQ Program or non-CDQ fishery sector allocation, between 40 percent and 70 percent of the Pacific

cod allocations are apportioned to the A-season, historically the most lucrative fishing season due to the presence of valuable roe in the fish and the good quality of the flesh during that time of year.

The allocation of Pacific cod among the CDQ Program and the nine non-CDQ fishery sectors, as well as the seasonal apportionment of those allocations, create a large number of distinct sector and season allocations. The regulations allow NMFS to reallocate (rollover) any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector's next season during the current fishing year, unless the Regional Administrator determines a non-CDQ fishery sector will not be able to harvest its allocation (see § 679.20(a)(7)(iv)(B)).

Permits and Licenses

To monitor compliance with harvest catch limits, prohibited species (non-retained) catch limits, and sideboard regulations that limit participation in other fisheries, NMFS requires various permits that authorize or restrict access to the groundfish fisheries in the Federal waters of the BSAI. The two most relevant permits associated with this final rule are FFPs and LLP licenses.

1. Federal Fisheries Permit

All vessels that retain BSAI Pacific cod in the EEZ are required to have an FFP on board the vessel at all times (§ 679.4(b)(1)). An FFP authorizes a vessel owner to deploy a vessel to conduct fishing operations in the EEZ of the BSAI in accordance with the endorsements on the FFP. An FFP includes many endorsements, such as type of gear (e.g., pot, hook-and-line, and trawl), vessel operation category (catcher vessel, catcher/processor, mothership, tender vessel, or support vessel), and regulatory area of operation (e.g., BSAI) in which a permitted vessel is eligible to fish. In some fisheries, a species endorsement is also required. For example, the owners and operators of harvesting vessels that participate in the directed BSAI Pacific cod fisheries, except vessels using jig gear, are required to have an FFP endorsement for Pacific cod, along with endorsements for the gear type used to fish for Pacific cod, the vessel operation type, and the regulatory area(s) in which the fishery is prosecuted. All CDQ vessels and all non-jig vessels listed in Table 1 are required to have an FFP onboard that is endorsed for Pacific cod. A vessel may not be operated in a category other than what is specified on the FFP.

The operators of harvesting vessels that possess an FFP are required to comply with NMFS observer coverage requirements (§ 679.50(a)). In addition, FFP holders participating in a pollock, Atka mackerel, or Pacific cod fishery in the BSAI are required to have on board the vessel a transmitting vessel monitoring system (VMS) (§ 679.28(f)(6)). A VMS consists of a NMFS-approved transmitter that automatically determines a vessel's position and transmits that information to NMFS. While Pacific cod directed fisheries are open, all harvesting vessels with an FFP endorsed with a hook-and-line, pot, or trawl Pacific cod endorsement are required to have an operational VMS, regardless of where the vessel is fishing at the time or what the vessel is targeting. Thus, a VMS is required of all vessels with an FFP endorsed for Pacific cod hook-and-line, pot, or trawl gear while fishing in state waters (0 to 3 nm) adjacent to the BSAI. However, because these Federal requirements apply as a condition of being issued an FFP, operators of vessels that have not been issued an FFP and that fish exclusively in state waters are not required to possess an FFP or have an FFP on board the vessel, and such vessels are not subject to Federal observer, VMS, or recordkeeping and reporting requirements unless specified by the State.

FFPs are valid for three years and, unless revoked, suspended, or surrendered, are in effect from the date of issuance through the end of the three-year cycle. The current cycle of FFPs issued for vessels that operate in Alaska waters is January 1, 2018, through December 31, 2020. A vessel operator with an FFP can surrender the permit at any time and have NMFS reissue the FFP any number of times within the three-year cycle.

While any vessel owner can apply for an FFP with any combination of vessel operation, area, gear, or species endorsements, an FFP, by itself, does not necessarily authorize the FFP holder or the vessel named on the FFP to participate in the Federal Pacific cod fisheries. Most of the vessels that are used to participate in the Federal Pacific cod fisheries in the BSAI are also required to have a groundfish LLP license.

2. License Limitation Program (LLP) License

A groundfish LLP license authorizes a vessel to be used in a directed fishery for groundfish in the BSAI in accordance with the specific area and species endorsements, the vessel and gear designations, the maximum length

overall (MLOA) specified on the license, and any exemption from the MLOA specified on the license. Most vessel operators fishing for groundfish in the BSAI must have an LLP license on board at all times when the vessel is engaged in fishing activities (§ 679.4(k)). LLP licenses are issued by NMFS to qualified persons. Exemptions to the LLP license requirement in the BSAI are listed at § 679.4(k)(2), including an exemption for any vessel that does not exceed 32 ft (9.8 m) length overall (LOA), and an exemption for jig vessels less than or equal to 60 ft (18.3 m) LOA that use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line.

In order to participate in the BSAI Pacific cod fisheries, several endorsements are required to be specified on an LLP license, such as vessel operation type, area, gear designation, and maximum length overall (MLOA). The endorsements for operation type on LLP licenses are either catcher vessel or catcher/processor. A catcher vessel endorsement allows a vessel to harvest but not process fish on board. A catcher/processor endorsement allows both harvesting and onboard processing, and also allows a vessel to deliver the catch to a separate processor. Area endorsements on BSAI groundfish LLP licenses authorize a vessel to fish in either the Bering Sea, the Aleutian Islands, or both areas. Gear endorsements for BSAI groundfish LLP licenses are either for trawl, non-trawl, or both gear types. For groundfish vessels with non-trawl endorsed licenses, NMFS implemented regulations in 2002 that require a Pacific cod endorsement for hook-and-line and pot gear LLP licenses on catcher/processor vessels and catcher vessels that are 60 ft (18.3 m) LOA or greater and that are used to participate in the BSAI Pacific cod fisheries (67 FR 18130, April 15, 2002). Catcher vessels less than 60 ft (18.3 m) are exempt from the required Pacific cod endorsement on their LLP license.

Groundfish LLP licenses also identify whether the license is associated with the Amendment 80, American Fisheries Act, or Gulf of Alaska Rockfish license limitation programs. BSAI groundfish LLP licenses further specify whether the license is restricted by regulatory sideboards from being used in other fisheries.

In general, a vessel is authorized to use only the gear that is designated on the LLP license. Unlike the FFP, the endorsements on an LLP license are not generally severable and an LLP license, with its associated endorsements, can be

reassigned to a different vessel only once per year. Like FFPs, operators of vessels that have not been issued an LLP license and that fish exclusively in state waters fisheries are not required to comply with Federal requirements for LLP licenses.

BSAI State Waters Pacific Cod Fisheries

As mentioned above, catch limits for the Federal Pacific cod fisheries include the sum of harvests that come from BSAI Federal waters and from the concurrent state parallel Pacific cod fisheries. Under the authority of Alaska statutes and regulations, the Alaska Department of Fish and Game (ADF&G) manages two parallel Pacific cod fisheries and three GHL fisheries in the state waters adjacent to the BSAI EEZ. Two of the GHL fisheries are held in the State's Dutch Harbor Subdistrict of the Bering Sea; the third is within the Aleutian Islands Subdistrict of the Aleutian Islands.

Parallel Pacific Cod Fisheries

During the Federal BSAI Pacific cod fisheries in the EEZ, the State creates concurrent, or parallel, Pacific cod fisheries in state waters by generally adopting NMFS management actions for state waters. The initial Federal BSAI Pacific cod season ("A-Season") opens January 1 for vessels using hook-and-line, pot, and jig gear, and January 20 for vessels using trawl gear. Unless specifically prohibited by State regulation, (e.g., nonpelagic trawl gear is prohibited in state waters by 5 AAC 39.164 (4)), the State authorizes the same gear types, seasons, and bycatch limits that apply in the adjacent Federal BSAI Pacific cod season during a parallel fishery. In addition, during these State parallel Pacific cod fisheries, vessels using longline gear may not exceed 58 feet in overall length (OAL) (5 AAC 28.690(c)). Except for vessels using mechanical jigging machines, State regulations require all vessels that participate in a parallel Pacific cod fishery to have an activated VMS (5 AAC 28.087(c)).

Although the State adopts many of the management measures applicable to vessels participating in the Federal BSAI Pacific cod fisheries in the EEZ, the State does not require vessels that participate in the State's parallel Pacific cod fisheries to possess an FFP or an LLP license. Effective January 1, 2012, NMFS implemented regulations at § 679.7 that prohibit federally permitted catcher/processor pot and catcher/processor hook-and-line vessels from being used to catch and retain Pacific cod in state waters during the State's parallel fisheries unless the vessel is

designated on an FFP and an LLP license that have the required endorsements (76 FR 73513, November 29, 2011). Additionally, regulations at § 679.7 require Federal permit holders who operate vessels in these two catcher/processor sectors to adhere to the Federal BSAI Pacific cod opening and closing periods when they participate in the State's parallel fisheries. At this time, vessels in other non-CDQ fishery sectors may participate in the State's Pacific cod parallel fisheries without having an FFP, an LLP license, and endorsements necessary to participate in the Federal fishery.

As mentioned above, Pacific cod harvested during the State's parallel fisheries accrue toward the Federal Pacific cod TAC. The State closes a parallel Pacific cod fishery by gear sector when NMFS determines the TAC for a Federal fishery sector using that gear type has been reached or when incidental species allowances are met.

Section 2.7 of the Analysis and the preamble to the proposed rule provide specific details on the number of vessels that have participated in the State's BSAI Pacific cod parallel fisheries, by vessel sector, over the 2010–2019 period. For all sectors combined, the total number of participating vessels in the BSAI Pacific cod parallel fisheries has ranged from 13 to 39 vessels per year. The proportion of Pacific cod that those vessels have caught in state waters during the concurrent BSAI Federal waters and State parallel fisheries varies by sector, but for all sectors combined has ranged from 2 percent to 5 percent of their total BSAI Pacific cod catch over the 2010–2019 period.

GHL Fisheries

State GHL fisheries for Pacific cod are also prosecuted in state waters, but occur when fishing by specific Pacific cod sectors in the Federal and parallel fisheries is closed. The State currently manages GHL fisheries adjacent to both the BSAI subareas. The GHL fisheries may re-open and close as needed to coordinate with Federal fishery openings.

The Alaska Board of Fisheries (BOF) established the Dutch Harbor Subdistrict (DHS) state waters Pacific cod GHL fishery in 2013 (5 AAC 28.648). Pot and jig gear are the only legal gear types. In the Aleutian Islands Subdistrict GHL fishery (5 AAC 28.647), state regulations allow trawl, longline, pot, and jig gear vessels. More information on the GHL fisheries in the Dutch Harbor and Aleutian Islands Subdistricts can be found in section 2.6 of the Analysis and in the preamble to the proposed rule.

Need for this Action

This final rule prohibits some federally permitted vessels from fishing for Pacific cod in the State of Alaska's parallel fisheries in the BSAI. Under current regulations, Federal FFPs and LLP licenses are only required for fishing activity in the EEZ. As a result, some vessels without an FFP or LLP license, and other vessels that have an FFP but with an LLP license that is not endorsed for Pacific cod fishing in the adjacent BSAI Federal waters, have participated in the State's parallel fisheries. Additionally, the State is legally constrained from allocating resources within a single fishery, and as a result does not recognize sector allocations based on operation types, such as catcher vessel versus catcher/processor designations. This circumstance has inadvertently allowed fishing in the State parallel fisheries by catcher vessels even when the Federal fishery sector for those vessels has fully achieved its Federal Pacific cod allocation. This has been most common among hook-and-line vessels. The Council determined, and NMFS agrees, that this fishing activity has negative effects on the Federal management regime for BSAI Pacific cod and must be curtailed to maintain the conservation and management benefits intended by the Council and implemented by NMFS.

For example, the Federal Pacific cod seasons for the hook-and-line catcher/processor sector typically remain open to directed fishing for much of the year, whereas the seasons for hook-and-line catcher vessel sectors, which fish under much smaller allocations, normally close earlier in the year. Because the State does not recognize sector allocations based on operation types, the State parallel Pacific cod fishery remains open for much of the year, so long as the Federal catcher/processor hook-and-line season is open. Therefore, when the catcher vessel hook-and-line allocation has been achieved, and NMFS closes that sector's season in Federal waters, some of those vessels have continued to fish for Pacific cod in state waters. When this has occurred, NMFS has been obligated to reallocate Pacific cod from other sectors to prevent overharvest of the area TAC. The Council determined that this complicates Federal conservation and management measures that are intended to hold sectors to their allocations and it also undermines the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting.

When evaluating these issues, the Council also considered the terms under

which FFPs are issued. Under current regulations, an FFP is issued in a three-year cycle, but within that period, a vessel operator can surrender the FFP at any time, then reapply for a reissuance of the permit any number of times within the three-year cycle. This would provide an opportunity for vessel operators to avoid the prohibitions in this rule. Lengthening the amount of time that must pass between the period when a person surrenders an FFP and later reapplies for a new FFP will create a disincentive for vessel owners to circumvent Federal regulations by temporarily surrendering the FFP. Similar concerns apply to FFP amendments.

This final rule addresses these issues. The regulations in this final rule are similar to regulations implemented by NMFS in 2011 as part of Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (76 FR 74670, December 1, 2011), and are also similar to regulations that apply to pot and hook-and-line catcher/processors in the BSAI (76 FR 73513, November 29, 2011).

Description of the Final Rule and Effects

FFP Requirements and LLP License

This rule prohibits a trawl, hook-and-line, or pot gear vessel that is named on an FFP or LLP license to catch and retain BSAI Pacific cod in state waters during the State's parallel Pacific cod fisheries unless the vessel is named on an FFP and LLP license that have the required endorsements. In addition, this rule prohibits a federally permitted hook-and-line, pot, or trawl gear vessel from catching and retaining BSAI Pacific cod in state waters during the State's parallel fisheries when NMFS has closed the corresponding sector to directed Pacific cod fishing in the EEZ. Through this permit condition, federally permitted vessels will be required to adhere to Federal seasonal Pacific cod closures and other management measures for their fishery sector when participating in the State's parallel fisheries.

Additionally, the regulations implemented by this final rule limit the number of times in which a vessel owner may relinquish an FFP and then reapply for a new FFP. Specifically, if an FFP is issued to a pot or hook-and-line catcher vessel with a Bering Sea or Aleutian Islands Pacific cod endorsement, or to a trawl vessel with a Bering Sea or Aleutian Islands endorsement, and if the FFP for the vessel is surrendered, then the vessel will not be eligible to receive a new FFP

until after the expiration date of the surrendered FFP.

As noted above, the Council's intent for the regulatory amendments in this rule is to expand upon rules already in place for BSAI catcher/processor vessels that fish for Pacific cod with pot or hook-and-line gear. Federal regulations currently require these two catcher/processor sectors to have an FFP and LLP license with correct Federal Pacific cod endorsements in order to fish in the parallel fisheries (76 FR 73513, November 29, 2011). The two Pacific cod catcher/processor sectors are also subject to the FFP relinquish and reapply rules mentioned above.

The regulations in this final rule reflect the Council's intent and do not modify the regulatory requirements for vessels using jig gear in the BSAI. Additionally, this rule does not limit participation in the state waters GHL fisheries.

Section 2.7.6 of the Analysis and the Final Regulatory Flexibility Analysis (FRFA) below provide details on the number and type of vessels that may potentially be affected by the regulations in this rule.

Amending, Surrendering, and Reissuing an FFP

The regulations established in this rule also prohibit amendment of an FFP during its effective period and create a disincentive for a vessel operator to surrender, or relinquish, their FFP during its effective period. Under current regulations, an FFP holder could avoid vessel observer coverage, catch reporting, and FFP and LLP requirements by amending or surrendering their FFP to fish in the State's Pacific cod parallel fishery, and then requesting that NMFS amend or reissue the FFP so that the vessel can be used to resume fishing in the EEZ. Amending or surrendering an FFP in this fashion may degrade the quality of information available to NMFS to manage the Pacific cod fishery and provide an opportunity to undermine the intent of this rule. As noted above, FFPs are currently issued on a three-year cycle; however, a vessel operator with an FFP can amend or surrender the permit at any time and have the FFP reissued any number of times within the three-year cycle. Prohibiting an amendment of an issued FFP during the three-year cycle and lengthening the amount of time that must pass before a person can reapply for a surrendered FFP makes it more difficult for FFP holders to circumvent the regulations by temporarily amending or surrendering the FFP. The regulatory provisions in this final rule for FFPs will address

situations where a vessel owner could choose to amend or surrender the FFP before fishing in the State parallel or GHL fisheries to avoid NMFS observer coverage or recordkeeping and reporting requirements, and then seek to amend or reissue the FFP for the opening of the Federal waters fishery.

Final Regulations

This final rule amends paragraphs (b)(3)(ii)(B) and (b)(3)(iii)(B) in 50 CFR 679.4 by expanding the scope of the applicable FFP vessel operation types to include both catcher/processors and catcher vessels. The revisions also specify that the applicable FFP gear types include trawl, pot, and hook-and-line gears. Note this final rule explicitly excludes vessels using jig gear from these regulatory actions.

This final rule amends paragraphs (c)(3) and (4) in 50 CFR 679.7 to expand the scope of vessels that are prohibited from participating in the BSAI parallel fisheries without properly endorsed LLP licenses. The former regulations that restrict fishing in the Pacific cod parallel fisheries applied only to catcher/processor vessels fishing pot or hook-and-line gear in the parallel waters of the BSAI. This action changes the regulations to identify both catcher/processor and catcher vessel operation types, and to include vessels using trawl, pot, and hook-and-line gear types in the regulations.

Modifying the regulations currently at § 679.7(c)(4)(i) to include trawl, pot, and hook-and-line gear types provides an opportunity to simplify the regulations by deleting paragraph (c)(4)(ii) in § 679.7.

Lastly, this final rule amends paragraph (b)(3)(i) in 50 CFR 679.4 to specifically reference the three-year cycle NMFS uses for issuing FFPs. Regulations at § 679.4(b) govern issuance of FFPs, and for many years specifically referenced the three-year cycle followed by NMFS for issuing FFPs. NMFS proposed to maintain the three-year cycle when it published a proposed rule to modify recordkeeping and reporting regulations in 2007 (72 FR 35747; June 29, 2007). However, the specific reference to the three-year cycle was inadvertently omitted in the supplemental proposed rule (73 FR 55368; September 24, 2008) and not included in the final rule for that action (73 FR 76136; December 15, 2008). NMFS has continued to use a three-year cycle for issuing FFPs and this final rule will reinsert the specific reference to this cycle.

Changes From Proposed to Final Rule

NMFS did not make any substantive changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

Comments and Responses

NMFS received and considered four unique, relevant comment letters on the proposed rule. All public comment letters submitted during the comment period may be obtained from www.regulations.gov. Three of the letters expressed support for the proposed regulations, and one letter did not support the proposed rule. None of the individual commenters identified themselves as direct participants in the BSAI Pacific cod fisheries. All three letters that supported the proposed rule were submitted anonymously, and NMFS cannot determine whether they were submitted by separate individuals. The letters and comments are grouped, summarized, and responded to below.

Comment 1: The three comment letters that supported the proposed regulations each expressed the importance of avoiding overfishing. The letters mentioned the conservation and management benefits of enhancing proper catch accounting in the fisheries. Two of the comment letters recognized that Pacific cod in the BSAI are not overfished.

Response: NMFS acknowledges these comments, and reiterates the benefits of this rule, which are to enhance the management of the Pacific cod fisheries and to reflect the intent of the Council regarding license limitation, vessel sector allocations of Pacific cod, and proper catch reporting. NMFS agrees that Pacific cod in the BSAI are currently not overfished.

Comment 2: Two of the three supporting letters suggested the new regulations would assist NMFS by making it easier to discipline or punish persons who exceed the Pacific cod TAC.

Response: NMFS agrees that keeping harvests within TAC limits is an essential element of effective management; however, the record that supports this final rule does not reflect concerns with the agency's current enforcement of overharvest limits or deterrence of regulatory violations.

Comment 3: One comment did not support the proposed rule, and briefly expressed it would not be beneficial to American citizens or to the fish.

Response: NMFS has determined that the final rule is consistent with the BSAI FMP, the MSA, and other applicable law and disagrees with the premise of the comment. Regulations

similar to those adopted under this final rule have been in place since 2011 for the parallel Pacific cod fisheries in the Gulf of Alaska and for catcher/processor vessels that harvest Pacific cod in the BSAI. In each of these cases, the regulations have proven to be effective by enhancing the management of the fisheries. The regulations in this rule reflect the Council's and NMFS's intent to adopt similar regulations for Pacific cod catcher vessel operations in the BSAI.

Classification

Pursuant to Section 304(b)(3) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the BSAI FMP, other provisions of the MSA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

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

Regulatory Impact Review

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS has adopted the action alternative over the former status quo, and makes regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis (FRFA) section. More information is provided in the Analysis, as well as in the preamble to this rule and in the preamble to the proposed rule.

Final Regulatory Flexibility Analysis (FRFA)

A final regulatory flexibility analysis (FRFA) was prepared in this final rule. This FRFA incorporates the initial regulatory flexibility analysis (IRFA).

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement

of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this rule, along with the need for and objectives of the rule, are contained in the preamble herein and in the preamble to the proposed rule (85 FR 58322, September 18, 2020), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on September 18, 2020 (85 FR 58322). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on October 19, 2020. None of the comments from the public directly or indirectly referenced the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Final Rule

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess

of \$11 million for all its affiliated operations worldwide.

This final rule directly regulates individuals and entities that participate, or would seek to participate, in the BSAI Pacific cod parallel fisheries with federally permitted vessels using trawl, hook-and-line, or pot gear. The Analysis indicates that 192 vessels have a history of participation in the BSAI targeted Pacific cod fisheries over the 2010–2019 period. Based upon the estimated ex-vessel earnings of these vessels, the Analysis also indicates that 71 of these vessels are considered small entities. Of the 30 vessels that are expected to be directly impacted by the regulations in this rule, 29 are considered small entities, based on SBA criteria.

This rule, which prohibits certain federally permitted vessels from catching and retaining Pacific cod in the State's parallel fishery unless the vessel has the required permits, licenses, and endorsements, is intended to reflect the intent of previous recommendations by the Council regarding license limitation, vessel sector allocations of Pacific cod, and catch reporting. Additionally, this rule is expected to enhance the conservation and management of the fisheries by holding vessel sectors to their allocations and to promote the goals and objectives of the BSAI FMP for the Federal Pacific cod fishery. In 2011, NMFS implemented provisions similar to this final rule as part of Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Regulations established by this final rule are also very similar to current regulations that control the participation of catcher/processor hook-and-line and pot gear vessels in the BSAI; the regulations in this rule effectively add BSAI hook-and-line catcher vessels, pot catcher vessels, and trawl gear vessels to the existing body of BSAI fishing regulations.

The majority of the 30 vessel owners who are directly impacted by this rule currently have LLP licenses that allow them to participate in the parallel fisheries. Five of the 30 vessels currently do not have FFPs, which prevents them from fishing in Federal waters. Under this final rule, these vessels could continue to fish as they do now, solely in state waters. However, if the vessel owners choose to obtain an FFP, their vessels would have the flexibility to fish in both state and Federal waters during the directed Federal Pacific cod fishery for their sector. Also among the 30 directly impacted vessels, 15 other vessels are currently associated with FFPs and are linked to LLP licenses that allow them to continue to fish for Pacific cod in

both Federal and state waters during the concurrent Federal and parallel fisheries; however, in previous years, an incremental portion of their participation has occurred in the parallel fishery when their sector was closed to fishing in Federal waters. Under this final rule, these vessels will no longer be able to circumvent seasonal closures for their sector by participating in the parallel fishery after their Federal sector has been closed. This ensures that their Pacific cod harvests will be attributed to the appropriate sector, as designated on their LLP license.

Vessel owners most likely to be impacted by this final rule are those whose vessels have an FFP and participate in the parallel fishery, but who do not have the appropriate LLP license to fish for Pacific cod in the BSAI Federal waters. These vessels could either exit the parallel fishery and therefore the BSAI Pacific cod fishery entirely, or they could forfeit their FFP (and therefore fish solely in state waters, but also forfeit Federal fishing opportunities associated with their FFP), or they could obtain a valid LLP license that would allow them the flexibility to participate in both the Federal and parallel Pacific cod fisheries. Because LLP licenses are a transferable and marketable asset, the owners' decisions will likely be influenced by the cost and availability of an LLP license.

Recordkeeping, Reporting, and other Compliance Requirements

Under this final rule, recordkeeping and reporting will not change for federally permitted catcher vessels that participate in the directed BSAI non-CDQ Pacific cod fisheries. The scope of this final rule modifies the conditions of Federal permits and imposes participation requirements for certain federally permitted vessels when fishing for Pacific cod in the parallel fisheries. This action also modifies the conditions under which existing permits may be used. Those specific requirements and the permit conditions are described in the preambles to this rule and to the proposed rule, and are not repeated here.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this final rule and existing Federal rules has been identified.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered two alternatives. Among the two

alternatives, Alternative 2 (the preferred, action alternative) promotes conservation, management, and catch accounting measures that were previously adopted by the North Pacific Fishery Management Council (Council) regarding license limitation, sector allocations, and catch reporting. As noted in the preamble to this rule, the Council's intent for the regulatory amendments of Alternative 2 is to expand upon rules already in place for BSAI catcher/processor vessels that fish for Pacific cod with pot or hook-and-line gear. Federal regulations currently require these two catcher/processor sectors to have an FFP and LLP license with correct Federal Pacific cod endorsements in order to fish in the parallel fisheries (76 FR 73513, November 29, 2011). These two Pacific cod catcher/processor sectors are also subject to the FFP relinquish and reapply rules implemented by this rule.

Alternative 1 was the no action alternative. Under the status quo, the regulations inadvertently allow fishing in the State parallel fisheries by catcher vessels even when the Federal fishery sector for those vessels has fully achieved its Federal Pacific cod allocation, which is contrary to the Council's intent.

The regulations in this final rule do not modify the regulatory requirements for vessels using jig gear in the BSAI. Additionally, this rule does not limit participation in the state waters GHL fisheries.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS will publish on its website a summary of this rulemaking including compliance requirements that will serve as the small entity compliance guide. Copies of the proposed rule and this final rule are available from the NMFS website at <https://fisheries.noaa.gov/region/alaska>.

Collection-of-Information Requirements

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information

requirements would continue to apply under the following OMB Control Numbers: 0648–0206, Alaska Region Permit Family of Forms (FFP), and 0648–0334, Alaska License Limitation Program for Groundfish, Crab, and Scallops.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 2020.

Samuel D. Rauch, III

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.4, revise paragraphs (b)(3)(i), (b)(3)(ii)(B), and (b)(3)(iii)(B) to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(3) * * * (i) *Length of permit effectiveness.* NMFS issues FFPs on a three-year cycle and an FFP is in effect from the effective date through the expiration date, as indicated on the FFP, unless the FFP is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

(ii) * * *

(B) For the BSAI, NMFS will not reissue a surrendered FFP to the owner

or authorized representative of a vessel named on an FFP that has been issued with endorsements for catcher/processor or catcher vessel operation type; trawl, pot, and/or hook-and-line gear type; and the BSAI area, until after the expiration date of the surrendered FFP as initially issued.

* * * * *

(iii) * * *

(B) In the BSAI, NMFS will not approve an application to amend an FFP to remove a catcher/processor or catcher vessel operation type endorsement, trawl gear type endorsement, pot gear type endorsement, hook-and-line gear type endorsement, or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor or catcher vessel operation type, trawl, pot, or hook-and-line gear type, and the BSAI area.

* * * * *

■ 3. In § 679.7, revise paragraphs (c)(3) and (4) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) *Parallel Pacific cod fisheries—participation requirements.* Use a vessel named or required to be named on an FFP to catch and retain Pacific cod from State of Alaska waters adjacent to the BSAI, when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A)(2) through (9), unless:

(i) That non-trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k), unless that vessel is using jig gear and exempt from the LLP license requirement under § 679.4(k)(2)(iii). Each vessel required to have an LLP license must be designated with the following endorsements:

(1) The BSAI area endorsement for the BSAI area adjacent to the parallel fishery where the harvest occurred; and

(2) A BSAI catcher/processor Pacific cod hook-and-line endorsement, a BSAI catcher/processor Pacific cod pot endorsement, or a BSAI Pacific cod catcher vessel endorsement if that catcher vessel is 60 feet or greater length overall; and

(B) An FFP issued under § 679.4(b) with the following endorsements:

(1) A catcher/processor or catcher vessel operation type endorsement;

(2) A BSAI area endorsement; and

(3) A pot or hook-and-line gear type endorsement.

(ii) Or, that trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) endorsed for trawl gear with the BSAI area endorsement for the BSAI area adjacent to the parallel fishery where the harvest occurred; and

(B) An FFP issued under § 679.4(b) with the following endorsements:

(1) The BSAI area endorsement;

(2) An operational type endorsement;

(3) A trawl gear type endorsement;

and

(4) A Pacific cod gear type endorsement.

(4) *Parallel Pacific cod fisheries—closures.* Use a vessel named or required to be named on an FFP to catch and retain Pacific cod with trawl, pot, or hook-and-line gear from State of Alaska waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A) for trawl, pot, or hook-and-line gear, if directed fishing for Pacific cod is not open for the sector to which the vessel belongs in Federal waters.

* * * * *

[FR Doc. 2020–26593 Filed 12–2–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 233

Thursday, December 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0261]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a proposed policy statement titled NRC Enforcement Policy (the Policy). The NRC is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (*i.e.*, reactor, fuel cycle, and material licensees, vendors, and contractors) to assist the NRC in revising its policy.

DATES: Submit comments by February 1, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2020–0261. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments,

see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9143; email: Gerald.Gulla@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0261 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0261.
- *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 Draft NRC Enforcement Policy and Enforcement Policy Revision Summary are available in ADAMS under Accession Nos. ML20297A235 and ML20297A243 respectively.

- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at PDR.Resource@nrc.gov or call 1–800–397–4209 between 8 a.m. and 4 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2020–0261 in your comment submission.

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

www.regulations.gov as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Background

The mission of the NRC is to license and regulate the Nation’s civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Adequate protection is presumptively assured by compliance with the NRC’s regulations. The NRC Enforcement Policy (the Policy) contains the basic process used to assess and disposition apparent violations of NRC requirements.

III. Discussion

This document provides the public with an opportunity to review and provide comments on the draft revision to the policy found in ADAMS under Accession No. ML20297A235. Each proposed revision is referenced with a bracketed number, called an item number. Each item number is listed in the “Enforcement Policy Revision Summary” document (ADAMS Accession No. ML20297A243) and includes a brief description of the proposed revision. Comments received during this 60-day comment period will be considered for the final version of the policy.

Dated: November 30, 2020.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

[FR Doc. 2020–26639 Filed 12–2–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****21 CFR Part 1308****[Docket No. DEA-716]****Schedules of Controlled Substances: Temporary Placement of Brorphine in Schedule I****AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Proposed amendment; notice of intent.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule 1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one (commonly known as brorphine), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I of the Controlled Substances Act. When it is issued, the temporary scheduling order will impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) or propose to handle brorphine.

DATES: December 3, 2020.**FOR FURTHER INFORMATION CONTACT:**

Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362-8207.

SUPPLEMENTARY INFORMATION: This document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order (in the form of a temporary amendment) to add brorphine to schedule I under the Controlled Substances Act (CSA).¹ The temporary scheduling order will be published in the **Federal Register** on or after January 4, 2021.

Legal Authority

The CSA provides the Attorney General (as delegated to the

Administrator of DEA (Administrator) pursuant to 28 CFR 0.100) with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Administrator may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308.

Background

Section 811(h)(4) requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.² The Acting Administrator transmitted notice of his intent to place brorphine in schedule I on a temporary basis to the Assistant Secretary for Health of HHS (Assistant Secretary) by letter dated September 22, 2020. The Assistant Secretary responded to this notice by letter dated October 27, 2020, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for brorphine. The Assistant Secretary also stated that HHS had no objection to the temporary placement of brorphine in schedule I of the CSA. Brorphine is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for brorphine under 21 U.S.C. 355.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse; diversion

from legitimate channels; and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Brorphine

The availability of synthetic opioids on the illicit drug market continues to pose an imminent hazard to the public safety. Adverse health effects associated with the abuse of synthetic opioids and the increased popularity of these substances have been serious concerns in recent years. The presence of new synthetic opioids with no approved medical use exacerbates the unprecedented opioid epidemic the United States continues to experience. The trafficking and abuse of new synthetic opioids are deadly new trends.

The identification of brorphine on the illicit drug market has been reported in the United States, Canada, Belgium, and Sweden. Data obtained from preclinical pharmacology studies show that brorphine has a pharmacological profile similar to that of other potent opioids such as morphine and fentanyl, schedule II controlled substances. Because of the pharmacological similarities between brorphine and other potent opioids, the use of brorphine presents a high risk of abuse and may negatively affect users and their communities. The positive identification of this substance in law enforcement seizures and post-mortem toxicology reports is a serious concern to the public safety. The abuse of brorphine has been associated with at least seven fatalities between June 2020 and July 2020 in the United States. Thus, brorphine poses an imminent hazard to public safety.

Available data and information for brorphine, as summarized below, indicates that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under "Supporting and Related Material" of the public docket for this action at www.regulations.gov under Docket Number DEA-716.

¹ Though DEA has used the term "final order" with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a "temporary scheduling order." No substantive change is intended.

² The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Factor 4. History and Current Pattern of Abuse

Brorphine is part of a structural class of compounds known as substituted piperidine benzimidazolones. The general synthesis of brorphine was first reported in the literature in 2018.

Brorphine is not an approved pharmaceutical product and is not approved for medical use anywhere in the world. The Assistant Secretary, by a letter to DEA dated October 27, 2020, stated that there are no FDA-approved new drug applications or investigational new drug applications for brorphine in the United States; hence, there is no legitimate channel for brorphine as a marketed drug product. The appearance of brorphine on the illicit drug market is similar to other designer drugs trafficked for their psychoactive effects.

Since 2014, numerous synthetic opioids structurally related to fentanyl and several synthetic opioids from other structural classes have begun to emerge on the illicit drug market as evidenced by the identification of these drugs in forensic drug exhibits and toxicology samples. Beginning in June 2019, brorphine emerged in the U.S. illicit, synthetic drug market as evidenced by brorphine's identification in drug seizures. Between July and September of 2019, brorphine was first reported in drug casework in Canada and was first reported in police seizures in Sweden in March 2020.³

Brorphine has been encountered by U.S. law enforcement in powder form. In the United States, brorphine has been identified as a single substance and in combination with other substances. Twenty reports of brorphine have been reported in the National Forensic Laboratory Information System (NFLIS) in 2019 and 2020 from three different states (see Factor 5).⁴ In several NFLIS encounters, brorphine was found in combination with heroin (a schedule I

substance) and fentanyl (a schedule II substance). In reports from the Northeastern Illinois Regional Crime Laboratory, suspected heroin/fentanyl powders were analyzed and found to be brorphine in combination with flualprazolam, a non-scheduled benzodiazepine, and diphenhydramine, an over-the-counter antihistamine.⁵

Post-mortem toxicology samples collected and submitted to National Medical Services (NMS) Laboratory⁶ in June and July 2020 verified the appearance of brorphine. Brorphine was first reported by the Center for Forensic Science Research and Education (CFSRE)—Novel Psychoactive Substance (NPS) Discovery Program (under the novel psychoactive substances discovery program, in collaboration with NMS Labs) in July 2020. In seven post-mortem toxicology reports in June 2020 and July 2020, brorphine was found in combination with fentanyl, flualprazolam, and heroin. Evidence suggests that individuals are using brorphine as a replacement to heroin or other opioids, either knowingly or unknowingly.

Factor 5. Scope, Duration, and Significance of Abuse

Brorphine has been described as a potent synthetic opioid and evidence suggests it is being abused for its opioidergic effects (see Factor 6). According to a recent publication by CFSRE—NPS Discovery, brorphine has been positively identified in seven death investigation cases spanning between June 2020 and July 2020. These cases correspond to three states—Illinois (3), Minnesota (3), and Arizona (1). Most (n = 6) of the decedents were male. The decedents' ages ranged between 40's and 60's with an average age of 52 years. Other substances identified in postmortem blood specimens obtained from these decedents include flualprazolam, a nonscheduled benzodiazepine (n = 5), fentanyl, a schedule II substance (n = 7), and heroin, a schedule I substance (n = 4). The appearance of benzodiazepines and other opioids is common with polysubstance abuse.

NFLIS registered 20 reports of brorphine from Ohio (4), Pennsylvania (1), and Wisconsin (15) in 2019 and 2020. NFLIS was queried on August 18, 2020, for brorphine. Due to the rapid appearance of the drug, brorphine is most likely under reported as forensic laboratories secure reference standards for the confirmative identification and reporting of this substance.

The population likely to abuse brorphine appears to be the same as those abusing prescription opioid analgesics, heroin, tramadol, fentanyl, and other synthetic opioid substances. This is evidenced by the types of other drugs co-identified in samples obtained from brorphine seizures and post-mortem toxicology reports. Because abusers of brorphine are likely to obtain it through unregulated sources, the identity, purity, and quantity of brorphine are uncertain and inconsistent, thus posing significant adverse health risks to the end user. The misuse and abuse of opioids have been demonstrated and are well-characterized. According to the most recent data from the National Survey on Drug Use and Health (NSDUH),⁷ as of 2018, an estimated 10.3 million people aged 12 years or older misused opioids in the past year, including 9.9 million prescription pain reliever misusers and 808,000 heroin users. In 2018, an estimated 2 million people had an opioid use disorder which included 1.7 million people with a prescription pain reliever use disorder and 500,000 people with heroin use disorder. This population abusing opioids is likely to be at risk of abusing brorphine. Individuals who initiate use (*i.e.*, use a drug for the first time) of brorphine are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.*, fentanyl, morphine, etc.). Law enforcement reports demonstrate that brorphine is being illicitly distributed and abused.

³ Health Canada Drug Analysis Service (2019); Analyzed Drug Report Canada 2019—Q3 (July to September); European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (2020); EU Early Warning System Situation Report, Situation report 1—June 2020.

⁴ NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5 percent. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See 76 FR 77330, 77332, December 12, 2011. NFLIS data was queried on August 18, 2020.

⁵ Email communications with Northeastern Illinois Regional Crime Laboratory, dated 7/1/2020 and 6/11/2020.

⁶ NMS Labs, in collaboration with the Center for Forensic Science Research and Education at the Fredric Rieders Family Foundation and the Organized Crime Drug Enforcement Task Force at the United States Department of Justice, has received funding from the Centers for Disease Control and Prevention to develop systems for the early identification and notification of novel psychoactive substances in the drug supply within the United States.

⁷ The National Survey on Drug Use and Health (NSDUH), formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.*, ever used), past year, and past month abuse or dependence.

Factor 6. What, if Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated recently by the availability of potent synthetic opioids on the illicit drug market. Data obtained from pre-clinical studies demonstrate that buprenorphine exhibits a pharmacological profile similar to that of other mu (μ)-opioid receptor agonists. Data from *in vitro* studies completed in 2020 showed that buprenorphine binds to and activates the μ -opioid receptors. In the [^{35} S]GTP γ S cell-based receptor assay, buprenorphine, similar to fentanyl, acted as a μ -opioid receptor agonist. Buprenorphine's activation of μ -opioid receptor was also shown to involve recruitment of beta-arrestin-2, a regulatory protein whose interaction with the μ -opioid receptor has been implicated in the adverse effects of μ -opioid receptor activation. Buprenorphine binds to and activates the μ -opioid receptor and has efficacy on scale with fentanyl. It is well established that substances that act as μ -opioid receptor agonists have a high potential for addiction and can induce dose-dependent respiratory depression.

As with any μ -opioid receptor agonist, the potential health and safety risks for users of buprenorphine are high. The public health risks associated to the abuse of heroin and other μ -opioid receptor agonists are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses. According to the Centers for Disease Control and Prevention (CDC), opioids, mainly synthetic opioids other than methadone, are predominantly responsible for drug overdose deaths in recent years. A CDC report shows that, from 2013 to 2018, opioid-related overdose deaths in the United States increased from 25,052 to 46,802. Of the drug overdose deaths for 2018, opioids were involved in about 69.5 percent of all drug-involved overdose deaths.

In the United States, the abuse of opioid analgesics has resulted in large numbers of treatment admissions, emergency department visits, and fatal overdoses. The introduction of potent synthetic opioids such as buprenorphine into the illicit market may serve as a portal to problematic opioid use for those seeking these powerful opioids.

Buprenorphine has been co-identified with other substances in seven post-mortem toxicology cases in June and July of 2020. These substances include other opioids such as fentanyl and heroin, and other substance classes such as benzodiazepines. These deaths occurred in three states: Illinois, Arizona, and

Minnesota. Information gathered from case history findings shows that buprenorphine use is similar to that of classic opioid agonists. As documented by toxicology reports, poly-substance abuse remains common in fatalities associated with the abuse of buprenorphine.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of buprenorphine pose an imminent hazard to the public safety. DEA is not aware of any currently accepted medical uses for buprenorphine in the United States. A substance meeting the statutory requirements for temporary scheduling, found in 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for buprenorphine indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by 21 U.S.C. 811(h)(4), the Acting Administrator, through a letter dated September 22, 2020, notified the Assistant Secretary of DEA's intention to temporarily place buprenorphine in schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to 21 U.S.C. 811(h)(1) of DEA's intent to issue a temporary scheduling order. In accordance with 21 U.S.C. 811(h)(1) and (3), the Acting Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule buprenorphine in schedule I of the CSA, and finds that placement of this substance in schedule I of the CSA is necessary in order to avoid an imminent hazard to the public's safety.

The temporary placement of buprenorphine in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before January 4, 2021. Because the Acting Administrator hereby finds that it is necessary to temporarily place buprenorphine in schedule I to avoid an

imminent hazard to the public safety, the temporary order scheduling this substance will be effective on the date the order is published in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Acting Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon publication of the temporary order, buprenorphine will then be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Analyses

The CSA provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). As provided in this subsection, the Administrator (as delegated by the Attorney General) may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Secretary of HHS.

Inasmuch as 21 U.S.C. 811(h)(1) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement

of a publication in the **Federal Register** of a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. The APA expressly differentiates between an order and a rule, as it defines an “order” to mean a “final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making*.” 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an *order* instead of proceeding by rulemaking. Given that Congress specifically requires the Administrator to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in 21 U.S.C. 811(h)(1), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice-and-comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Acting Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 13771, this notice of intent is not a significant regulatory action. E.O. 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). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 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. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of E.O. 12866. In addition, this action does not meet the definition of an E.O. 13771 regulatory action, and the repeal and cost offset requirements of E.O. 13771 have not been triggered.

This action 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. Therefore, in accordance with E.O. 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

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

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

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

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

■ 2. In § 1308.11, add paragraph (h)(49) to read as follows:

§ 1308.11 Schedule I

*	*	*	*	*
(h) * * *				
(49) 1-(1-[1-(4-bromophenyl)ethyl]piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: bromphine; 1-[1-[1-(4-bromophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2H-benzimidazol-2-one)				
				9098
*	*	*	*	*

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020-26301 Filed 12-2-20; 8:45 am]

BILLING CODE 4410-09-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0534; FRL-10016-98-Region 9]

Approval and Promulgation of Air Quality State Implementation Plans; California; Plumas County; Moderate Area Plan for the 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve through parallel processing a state implementation plan (SIP) revision submitted by the State of California to address Clean Air Act (CAA or “Act”) requirements for the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS or “standard”) in the Plumas County Moderate PM_{2.5} nonattainment area (“Portola nonattainment area”). The submitted SIP revision is the State’s “Proposed Portola PM_{2.5} Plan Contingency Measure SIP Submittal” (“Proposed PM_{2.5} Plan Revision”), which includes a revised City of Portola ordinance regulating PM_{2.5} emission sources and the State’s demonstration that this submission meets the Moderate area contingency measure requirement for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. The EPA is also proposing to approve the contingency measure element of the Moderate area attainment plan for the Portola nonattainment area, as revised and supplemented by the Proposed PM_{2.5} Plan Revision. Because the EPA is proceeding by parallel processing, the agency is proposing, in the alternative, to disapprove the contingency measure element of the Moderate area attainment

plan if the State does not submit the final, adopted PM_{2.5} Plan Revision in substantially the same form before we take final action.

DATES: Any comments on this proposal must be received by January 4, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0534 at <https://www.regulations.gov>, or via email to Ungvarsky.john@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3963 or ungvarsky.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” or “our” refer to the EPA.

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I. Background

On January 15, 2013, the EPA strengthened the primary annual NAAQS for particulate matter with a diameter of 2.5 microns or less by lowering the level from 15.0 micrograms per cubic meter (µg/m³) to 12.0 µg/m³ (“2012 PM_{2.5} NAAQS”).¹ The EPA established this standard after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5} concentrations above these levels.

Epidemiological studies have shown statistically significant correlations between elevated PM_{2.5} levels and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.² PM_{2.5} can be emitted directly into the atmosphere as a solid or liquid particle (“primary PM_{2.5}” or “direct PM_{2.5}”) or can be formed in the atmosphere (“secondary PM_{2.5}”) as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia.³

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. The EPA designated and classified the Portola nonattainment area as “Moderate” nonattainment for the 2012 annual PM_{2.5} standards based on ambient monitoring data that showed the area was above 12.0 µg/m³ for the 2011–2013 monitoring period.⁴ For the 2011–2013 period, the annual PM_{2.5} design value for the Portola area was 12.8 µg/m³ based on monitored readings at the 161 Nevada Street and 420 Gulling Street monitors.⁵

¹ 78 FR 3086 and 40 CFR 50.18. Unless otherwise noted, all references to the PM_{2.5} NAAQS in this document are to the 2012 annual NAAQS of 12.0 µg/m³ codified at 40 CFR 50.18.

² Id.

³ EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

⁴ 80 FR 2206 (January 15, 2015).

⁵ From 2000 through early 2013, the Portola PM_{2.5} monitoring site was located at 161 Nevada Street. In 2013, the site was relocated to 420 Gulling Street.

The Portola PM_{2.5} nonattainment area includes the City of Portola (“Portola”), which has a population of approximately 2,100 and is located at an elevation of 4,890 feet in an intermountain basin isolated by rugged mountains. For a precise description of the geographic boundaries of the Portola PM_{2.5} nonattainment area, see 40 CFR 81.305.

Portola averages 20 inches of precipitation annually. From October through March the Portola nonattainment area has very cold temperatures with an average daily low temperature of approximately 22 degrees Fahrenheit. The combination of mountainous terrain, cold temperatures, and elevation can cause atmospheric inversions and impair PM_{2.5} dispersion, especially during the winter.

The local air district with primary responsibility for developing a plan to attain the 2012 annual PM_{2.5} NAAQS in this area is the Northern Sierra Air Quality Management District (NSAQMD or “District”). The District worked cooperatively with the California Air Resources Board (CARB) in preparing the Proposed PM_{2.5} Plan Revision. Under state law, authority for regulating sources under state jurisdiction in the Portola nonattainment area is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

On February 28, 2017, California submitted the “Portola Fine Particulate Matter (PM_{2.5}) Attainment Plan” (“Portola PM_{2.5} Plan” or “Plan”) to address the CAA’s Moderate area requirements for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. On March 25, 2019, the EPA approved all of the Portola PM_{2.5} Plan, except for the contingency measure element.⁶ The components of the Portola PM_{2.5} Plan that the EPA approved include the modeled demonstration that the area will attain the 2012 annual PM_{2.5} NAAQS by the applicable attainment date, which is December 31, 2021; the State and District control strategy for attaining the NAAQS by this date, including all reasonably available control measures and control technologies (RACT/RACM) and additional reasonable measures necessary for expeditious attainment; the reasonable further progress (RFP) demonstration and related quantitative milestones for the October 15, 2019 and October 15, 2022 quantitative milestone dates applicable to the area; and the

⁶ 84 FR 11208.

motor vehicle emissions budgets for 2019 and 2021.⁷

As part of the attainment control strategy, the Portola PM_{2.5} Plan relies on “Ordinance No. 344: An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces” (“City Ordinance No. 344”) to achieve direct PM_{2.5} emission reductions necessary for attainment by the December 31, 2021 attainment date. The EPA approved City Ordinance No. 344 into the SIP on March 5, 2018.⁸ The attainment control strategy in the Portola PM_{2.5} Plan also relies on an enforceable State commitment to implement an incentive grant program called the “Greater Portola Woodstove Change-out Program 2016” (“Wood Stove Program”) during the 2016 to 2021 period to fund the replacement of uncertified wood stoves with newer, EPA-certified devices and to educate residents on proper ways to store and burn wood. The EPA approved the Wood Stove Program into the SIP on April 2, 2018.⁹

City Ordinance No. 344 and the District’s Wood Stove Program collectively establish most of the recommended program elements outlined in the EPA’s guidance document entitled “Strategies for Reducing Residential Wood Smoke,”¹⁰ including a wood burning curtailment program in section 15.10.060 of City Ordinance No. 344 (Mandatory Curtailment of Wood Burning Heaters, Wood Burning Fireplaces, Wood-Fired Fire Pits and Wood-Fired Cookstoves During Stagnant Conditions).¹¹ The Portola PM_{2.5} Plan relies primarily on the Wood Stove Program to achieve the PM_{2.5} emission reductions necessary for the Portola nonattainment area to attain the 2012 annual PM_{2.5} NAAQS by December 31, 2021.¹²

The Portola PM_{2.5} Plan also contains a contingency measure element in section VI.B that identifies the wood-burning curtailment provision in section 15.10.060 of City Ordinance No. 344 and a District policy designed to

incentivize certain types of wood stove change-outs as contingency measures for the 2012 annual PM_{2.5} NAAQS.¹³ The EPA did not act on this element of the Portola PM_{2.5} Plan as part of its March 25, 2019 final action.¹⁴

On May 22, 2019, the Center for Biological Diversity filed a complaint in the United States District Court for the Northern District of California alleging that the EPA had, among other things, failed to take final action either approving or disapproving the contingency measure element of the Portola PM_{2.5} Plan. On February 19, 2020, the court issued an order directing, *inter alia*, that the EPA “sign a notice of final rulemaking to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part” the contingency measure element of the Portola PM_{2.5} Plan, under CAA sections 110(k)(2)-(4), no later than March 1, 2021.¹⁵

II. Summary of the Proposed PM_{2.5} Plan Revision

On September 9, 2020, the City of Portola adopted “Ordinance No. 359, An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces and the Prohibition of the Open Burning of Yard Waste” (“City Ordinance No. 359”). City Ordinance No. 359 amends City Ordinance No. 344, as codified in Chapter 15.10 of the Portola Municipal Code.¹⁶

Specifically, section 15.10.070 (Curtailed Levels and Period) of City Ordinance No. 359 contains a contingency measure that revises and supplements the contingency measure element of the Portola PM_{2.5} Plan. City Ordinance No. 359 also contains new provisions that ban all open burning of yard waste and debris within the City of Portola, with limited exceptions, and rennumbers several sections of the prior version of this ordinance (City Ordinance No. 354) without change.¹⁷ The additional open burning provisions in City Ordinance No. 359 are not part of the contingency measure element of the Plan. CARB has requested that the EPA entirely replace City Ordinance No.

344 in the SIP with City Ordinance No. 359.¹⁸

On October 26, 2020, the District Governing Board adopted City Ordinance No. 359 and, through Resolution 2020–09, instructed the District to submit City Ordinance No. 359 to CARB for inclusion in the SIP.¹⁹ On October 28, 2020, CARB submitted City Ordinance No. 359, together with a document entitled “Proposed Portola PM_{2.5} Plan Contingency Measure SIP Submittal,” October 16, 2020 (hereafter “CARB Staff Report”), to the EPA with a request for approval into the SIP through the EPA’s parallel processing procedures in 40 CFR part 51, appendix V, section 2.3.²⁰ We refer to City Ordinance No. 359 and the CARB Staff Report together as the “Proposed PM_{2.5} Plan Revision.” CARB has scheduled the Proposed PM_{2.5} Plan Revision for a hearing before the CARB Governing Board on November 19, 2020, and if it is then adopted, CARB will submit the final PM_{2.5} Plan Revision to the EPA for approval into the California SIP.²¹

III. Clean Air Act Requirements for PM_{2.5} Contingency Measures and Other Control Measures

A. Requirements for Contingency Measures

Under CAA section 172(c)(9) and the EPA’s implementing regulations for the PM_{2.5} NAAQS (“PM_{2.5} SIP Requirements Rule”),²² each SIP submission for a nonattainment area must include contingency measures to be implemented if the area fails to meet requirements concerning RFP, fails to meet requirements concerning quantitative milestones, or fails to attain the NAAQS by the applicable attainment date. Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon being triggered and that take effect without significant further action by the State or the EPA.²³ The purpose of the contingency measures is to continue progress in reducing emissions while a

¹⁸ NSAQMD, Resolution 2020–09 (October 26, 2020).

¹⁹ Id. Resolution 2020–09 instructs the District to exclude paragraph 15.10.060(B) (concerning penalties), section 15.10.100 (Violations), and section 15.10.110 (Continuing violations—each day being a separate violation) from the SIP submission.

²⁰ Letter dated October 28, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX, with enclosures. Although both the City and the District have adopted City Ordinance No. 359, CARB has not yet adopted it.

²¹ Id.

²² 81 FR 58010 (August 24, 2016), codified at 40 CFR part 51, subpart Z.

²³ 81 FR 58010, 58066 and Addendum, 42015.

⁷ Id.

⁸ 83 FR 9213.

⁹ 83 FR 13871.

¹⁰ EPA, “Strategies for Reducing Residential Wood Smoke,” Publication No. EPA–456/B–13–001, revised March 2013.

¹¹ 83 FR 64774, 64782 (December 18, 2018) (proposed action on Portola PM_{2.5} Plan) and EPA, Region IX, “Technical Support Document for the EPA’s Rulemaking for the California State Implementation Plan, Northern Sierra Air Quality Management District, City of Portola Ordinance 344, Wood Stove and Fireplace Ordinance,” July 2017 (“Ordinance 344 TSD”), 6.

¹² 83 FR 64774, 64788 (December 18, 2018).

¹³ Portola PM_{2.5} Plan, 72–74 (section VI.B, “Contingency Measure”).

¹⁴ 84 FR 11208.

¹⁵ *Center for Biological Diversity, et al. v. Andrew Wheeler*, Case No. 3:19-cv-02782–EMC, Order (N.D. Cal., February 19, 2020).

¹⁶ NSAQMD, Resolution 2020–09 (October 26, 2020).

¹⁷ City of Portola, Ordinance No. 359, adopted September 9, 2020.

state revises its SIP to meet a missed RFP requirement, to meet a missed quantitative milestone requirement, or to correct ongoing nonattainment.

Under the PM_{2.5} SIP Requirements Rule, contingency measures must be implemented following a determination by the EPA that the state has failed: (1) To meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable PM_{2.5} NAAQS by the applicable attainment date.²⁴ The contingency measures adopted as part of a PM_{2.5} attainment plan must consist of control measures for the area that are not otherwise required to meet other nonattainment plan requirements (*e.g.*, to meet RACM/RACT requirements) and must specify the timeframe within which their requirements become effective following any of the EPA determinations specified in 40 CFR 51.1014(a).

Neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but EPA guidance recommends that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP, calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. In general, we expect all actions needed to effect full implementation of the contingency measures to occur within 60 days after the EPA notifies the state of a failure to attain or to meet an RFP or quantitative milestone requirement.²⁵

It has been the EPA's longstanding interpretation of section 172(c)(9) that states may rely on existing Federal measures (*e.g.*, Federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and state or local SIP measures already scheduled for implementation that provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements, such as RACM/RACT, RFP, or expeditious attainment requirements. In *Bahr v. EPA* ("Bahr"), however, the Ninth Circuit Court of Appeals rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for approval of already implemented control measures

as contingency measures.²⁶ The Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.²⁷ Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already implemented measures to comply with the contingency measure requirement under CAA section 172(c)(9).

To comply with section 172(c)(9), as interpreted in the *Bahr* decision, a state must develop, adopt, and submit contingency measures to be triggered upon a failure to meet an RFP milestone, failure to meet requirements concerning quantitative milestones, or failure to attain the NAAQS by the applicable attainment date regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet RFP or quantitative milestone requirements and beyond those projected to achieve attainment of the NAAQS.

B. General Requirements for SIP Control Measures

SIP control measures and revisions thereto must be enforceable,²⁸ must not interfere with applicable requirements concerning attainment and RFP or other CAA requirements,²⁹ and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions.³⁰ Generally, in PM_{2.5} nonattainment areas classified as Moderate, SIP control measures must also implement RACM, including RACT, and additional reasonable measures.³¹

IV. Completeness Review of the Proposed PM_{2.5} Plan Revision

On October 28, 2020, CARB submitted the Proposed PM_{2.5} Plan Revision with a request that the EPA approve the submission into the SIP through the parallel processing procedures in 40 CFR part 51, appendix V, section 2.3. Parallel processing refers to a process that utilizes concurrent state and Federal proposed rulemaking actions. Generally, the state submits a copy of the proposed regulation or other revisions to the EPA before conducting its public hearing and completing its

public comment process under state law. The EPA reviews this proposed state action and prepares a notice of proposed rulemaking under Federal law. In some cases, the EPA publishes its notice of proposed rulemaking in the **Federal Register** during the same time frame that the state is holding its own public hearing and public comment process. The state and the EPA then provide for concurrent public comment periods on both the state action and Federal action on the initial SIP submission from the state. If, after completing its public comment process and after the EPA's public comment process has run, the state materially changes its final SIP submission to the EPA from the initial proposed submission, the EPA evaluates those changes and decides whether to publish another notice of proposed rulemaking in light of those changes or to proceed to taking final action on its proposed action and describe the state's changes in its final rulemaking action. Any final rulemaking action by the EPA will occur only after the state formally adopts and submits its final submission to the EPA.

Section 110(k)(1)(B) of the CAA requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that if the EPA has not affirmatively determined a SIP submission to be complete or incomplete, it will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, appendix V. The EPA has reviewed the Proposed PM_{2.5} Plan Revision and finds that it fulfills the completeness criteria of appendix V, with the exception of the requirements of paragraphs 2.1(e)–2.1(h), which do not apply to plans submitted for parallel processing.

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP submission to the EPA. To meet this requirement, a state's SIP submission must include evidence that the state provided adequate public notice and an opportunity for a public hearing, consistent with the EPA's implementing regulations in 40 CFR 51.102. However, because the Proposed PM_{2.5} Plan Revision was submitted for parallel processing, it is exempt from this requirement at the time of initial submission to the EPA, pursuant to 40 CFR part 51, appendix V, section 2.3.1. CARB and the District are required to meet these procedural criteria during the parallel processing period, and prior

²⁴ 40 CFR 51.1014(a).

²⁵ 81 FR 58010, 58066. See also General Preamble, 13512, 13543–13544, and Addendum, 42014–42015.

²⁶ *Bahr v. EPA*, 836 F.3d 1218, 1235–1237 (9th Cir. 2016).

²⁷ *Id.*

²⁸ CAA section 110(a)(2)(A).

²⁹ CAA section 110(l).

³⁰ CAA section 193.

³¹ CAA sections 172(c)(1) and 189(a)(1)(C) and 40 CFR 51.1009.

to adopting and submitting the final SIP submission to the EPA. The EPA will determine whether the final submission meets these requirements at the time of any final action on the PM_{2.5} Plan Revision.

V. Review of the Proposed PM_{2.5} Plan Revision

A. Revised Contingency Measure Element of Portola PM_{2.5} Plan

The contingency measure element in section VI.B of the Portola PM_{2.5} Plan, as submitted February 28, 2017, discusses two potential contingency measures for the 2012 PM_{2.5} NAAQS: (1) The mandatory wood-burning curtailment provision in section 15.10.060 of SIP-approved City Ordinance No. 344; and (2) a District “policy” to incentivize only certain types of wood stove change-outs following a determination by the District that the area will not meet the 2019 RFP emission target.³² The Plan indicates that the District identified these measures as potential contingency measures because they are not accounted for in the regional attainment demonstration modeling for the 2012 PM_{2.5} NAAQS.³³

The mandatory curtailment provision in SIP-approved City Ordinance No. 344 becomes effective January 1, 2021, and will prohibit the use of wood burning heaters, wood burning fireplaces, wood-fired fire pits and wood-fired cookstoves within city limits whenever the District declares a mandatory curtailment during the months of January, February, November, and December, unless it is an approved and currently registered EPA-certified wood burning heater.³⁴ The District will declare a mandatory curtailment whenever it determines that the 24-hour average PM_{2.5} concentration may exceed 30 µg/m³ on a given day and that adverse meteorological conditions are expected to persist.³⁵

The District “policy” to incentivize only certain types of wood stove change-outs is not associated with a specific control measure. Section VI.B of the Portola PM_{2.5} Plan states that if the District estimates, by October 31, 2018, that the area will not meet the 2019 RFP emission target, the District will only incentivize the replacement of older wood stoves with pellet stoves, propane stoves, or wood stoves meeting the

“Step 2” emission limits in the EPA’s new source performance standards (NSPS) for wood heating devices.³⁶

City Ordinance No. 359 contains a new contingency measure that revises and supplements the contingency measure element of the Portola PM_{2.5} Plan.³⁷ The new provision, in section 15.10.070 of City Ordinance No. 359, would strengthen the mandatory curtailment provision in SIP-approved City Ordinance No. 344 and would become effective within 60 days after the EPA makes any of the four determinations listed in 40 CFR 51.1014(a).³⁸ Specifically, the mandatory curtailment provision in section 15.10.070 of City Ordinance No. 359 would prohibit the use of wood burning heaters, wood burning fireplaces, wood-fired fire pits, and wood-fired cookstoves within city limits whenever the District declares a mandatory curtailment during the months of September through April, unless it is an approved and currently registered EPA-certified wood burning heater.³⁹ The District would declare a mandatory curtailment whenever it determines that the 24-hour average PM_{2.5} concentration may exceed 20 µg/m³ on a given day and adverse meteorological conditions are expected to persist.⁴⁰ CARB estimates that, if triggered, the requirements in section 15.10.070 of City Ordinance No. 359 would achieve reductions in direct PM_{2.5} emissions of 0.0024 tons per day (tpd) in 2022.⁴¹

The CARB Staff Report contains the State’s quantification of additional direct PM_{2.5} emission reductions estimated to be achieved in the Portola nonattainment area in 2022, the year after the December 31, 2021, attainment date applicable to the Portola nonattainment area. CARB attributes these additional emission reductions to ongoing implementation of the Wood Stove Program and several other control measures and programs that will achieve PM_{2.5} emission reductions beyond those emission reductions necessary for attainment by the December 31, 2021 attainment date, including increased participation in a voluntary curtailment program outside of the City of Portola and the District’s

disbursement of 2019 Targeted Airshed Grant funds to weatherize 30 homes in the Portola nonattainment area.⁴² CARB estimates that the emission reductions that will result from implementation of these other measures and programs, together with the emission reductions that would result from implementation of the contingency measure in City Ordinance No. 359, will achieve a total of 0.0087 tpd of direct PM_{2.5} reductions in 2022.

B. Additional Revisions in City Ordinance No. 359

The District implements open burning requirements in NSAQMD rules 300–317 that apply to a variety of area sources such as agricultural burning, forest burning, range improvement, and residences.⁴³ Neither these rules nor City Ordinance No. 344, however, restrict the open burning of yard waste. City Ordinance No. 359 contains a new prohibition on the open burning of yard waste, related definitions, and limited exemptions. These provisions are not part of the contingency measure element of City Ordinance No. 359 but supplement the existing PM_{2.5} control strategy in the Portola nonattainment area. Specifically, City Ordinance No. 359 contains the following new provisions:

- Definitions of the terms “debris,” “open burning,” “recreational fire,” and “yard waste” (section 15.10.020);
- A provision that bans all open burning of yard waste and debris within Portola, except as otherwise authorized in section 15.10.026 (section 15.10.025); and
- Provisions to exempt three types of burning activities from the ban on open burning: Certain open outdoor fires used only for cooking or for recreation, “training burns” permitted in advance by the Fire Chief and the District, and certain health- and safety-related burning activities for which the Fire Chief and the District have issued special burn permits (section 15.10.026).

City Ordinance No. 359 would also renumber the following provisions: Section 15.10.080 (Outdoor Wood-Fired Boiler Installation Prohibited), located at section 15.10.070 in City Ordinance No. 344; section 15.10.090 (Wood Stove Retailers/Contractors Required to Provide Educational Materials), located at section 15.10.080 in City Ordinance No. 344; and numerous definitions in section 15.10.020. These renumbering revisions would not affect the substance of these provisions.

³² Portola PM_{2.5} Plan, 72–74 (section VI.B, “Contingency Measure”). The EPA did not act on the contingency measure element of the Portola PM_{2.5} Plan as part of its March 25, 2019 final action (84 FR 11208).

³³ Portola PM_{2.5} Plan, 73.

³⁴ City Ordinance No. 344, section 15.10.060.

³⁵ Id.

³⁶ Portola PM_{2.5} Plan, 74.

³⁷ Upon the EPA’s final approval of City Ordinance No. 359, this ordinance (excluding paragraph 15.10.060(B) and sections 15.10.100 and 15.10.110) will entirely replace City Ordinance No. 344 in the SIP. NSAQMD, Resolution 2020–09 (October 26, 2020), 4 (para. 9).

³⁸ City Ordinance No. 359, section 15.10.070.

³⁹ Id.

⁴⁰ Id.

⁴¹ CARB Staff Report, 9 (Table 6).

⁴² CARB Staff Report, 10–13.

⁴³ The EPA approved NSAQMD rules 300 to 317 into the SIP on September 16, 1997 (62 FR 48480) and August 19, 1999 (64 FR 45170).

C. EPA Evaluation

Section 172(c)(9) of the CAA and EPA regulations require states to include contingency measures in nonattainment area plans to address potential failure to achieve RFP milestones, failure to meet requirements concerning quantitative milestones, and failure to attain the NAAQS by the applicable attainment date. For purposes of evaluating the contingency measure element of the Proposed PM_{2.5} Plan Revision, we find it useful to distinguish between contingency measures to address potential failure to attain the NAAQS (“attainment contingency measures”) and contingency measures to address potential failure to achieve RFP milestones or to meet quantitative milestone requirements (“RFP contingency measures”).

1. Contingency Measure Element of Portola PM_{2.5} Plan

The Portola PM_{2.5} Plan, as submitted February 28, 2017, identifies the mandatory curtailment provision in SIP-approved City Ordinance No. 344 as an attainment contingency measure and identifies a District “policy” to incentivize the replacement of older wood stoves with only pellet stoves, propane stoves, or wood stoves meeting the “Step 2” emission limits in the EPA’s NSPS for wood heating devices as an RFP contingency measure.⁴⁴

The mandatory curtailment provision in section 15.10.060 of City Ordinance No. 344 does not qualify for use as a contingency measure under CAA section 172(c)(9) because City Ordinance No. 344 is a SIP-approved component of the attainment control strategy in the Portola PM_{2.5} Plan.⁴⁵ Additionally, because this provision takes effect on January 1, 2021, before the December 31, 2021 attainment date and October 15, 2022 RFP milestone date applicable to the area, this measure is an already implemented measure that cannot be used to comply with the section 172(c)(9) contingency measure requirement under the Ninth Circuit’s decision in *Bahr*.

The District’s described “policy” for incentivizing the replacement of older wood burning devices with cleaner residential heating devices also does not qualify for use as a contingency measure under CAA section 172(c)(9) because it is not a fully adopted rule or control measure that is ready to be implemented

quickly upon being triggered and does not specify the timeframe within which its requirements would take effect following any of the EPA determinations specified in 40 CFR 51.1014(a).

Thus, the contingency measure element of the Portola PM_{2.5} Plan, as submitted February 28, 2017, fails to satisfy the requirements for contingency measures in CAA section 172(c)(9) and 40 CFR 51.1014.

2. Revised Contingency Measure for Attainment Purposes

City Ordinance No. 359 contains a new contingency measure that revises and supplements the contingency measure element of the Portola PM_{2.5} Plan. The new provision, in section 15.10.070 of City Ordinance No. 359, would increase the stringency of the mandatory curtailment provision in section 15.10.060 of SIP-approved City Ordinance No. 344 by lowering the threshold at which the District will declare a mandatory curtailment from 30 µg/m³ to 20 µg/m³ and by extending the period during which the District may declare such mandatory curtailments from four months (January to December) to eight months (September to April).⁴⁶ This revised contingency measure would satisfy the requirements of CAA section 172(c)(9) and 40 CFR 51.1014 because it: (i) Would take effect without significant further action by the State or the EPA, if the EPA makes any of the four determinations listed in 40 CFR 51.1014(a); (ii) would consist of control requirements not otherwise included in the attainment control strategy for the Portola nonattainment area; and (iii) would specify the timeframe within which it becomes effective following any of the EPA determinations listed in 40 CFR 51.1014(a).

We also considered the adequacy of the contingency measure from the standpoint of the magnitude of emission reductions the measure would provide if triggered. Neither the CAA nor the EPA’s implementing regulations for the PM_{2.5} NAAQS establish a specific amount of emission reductions that implementation of contingency measures must achieve, but we generally expect that contingency measures should provide for emission reductions approximately equivalent to one year’s worth of RFP. For the 2012 PM_{2.5} NAAQS in the Portola nonattainment area, one year’s worth of reductions needed for RFP is

approximately 0.0085 tpd of direct PM_{2.5} reductions.⁴⁷

The CARB Staff Report contains the State’s quantification of the emission reductions anticipated from implementation of section 15.010.070 of City Ordinance No. 359. The State estimates that lowering the curtailment threshold to 20 µg/m³ and extending the potential curtailment period by four months would reduce PM_{2.5} emissions by an additional 0.0024 tpd in 2022, the year after the attainment year for the 2012 PM_{2.5} NAAQS in the Portola nonattainment area.⁴⁸ This estimated reduction in emissions from the contingency measure alone does not achieve one year’s worth of RFP for the Portola nonattainment area. However, in the Proposed PM_{2.5} Plan Revision CARB provides the larger SIP planning context in which to judge the adequacy of the contingency measure by identifying surplus direct PM_{2.5} reductions estimated to be achieved in 2022 from other measures. The surplus emission reductions result from already implemented measures and programs, including the ongoing implementation of the Wood Stove Program (0.0059 tpd), increased participation in a voluntary curtailment program outside of the City of Portola (0.0007 tpd), and the District’s disbursement of 2019 Targeted Airshed Grant funds to weatherize 30 homes in the Portola nonattainment area (0.0002 tpd).⁴⁹ Because these surplus emission reductions result from already implemented measures, they cannot themselves constitute contingency measures. However, these measures provide additional reductions that CARB believes may be taken into consideration when evaluating the adequacy of the emission reductions from the contingency measure. CARB estimates that these other control measures and programs, together with the contingency measure in City Ordinance No. 359, would achieve a total of 0.0087 tpd of direct PM_{2.5} reductions in 2022.

We have reviewed the State’s emission reduction estimates for 2022, as shown in the CARB Staff Report, and find the calculations reasonable. We therefore agree with the State’s conclusion that ongoing implementation of the measures and programs identified by the State in the CARB Staff Report

⁴⁷ Portola PM_{2.5} Plan, 73 (Table 19).

⁴⁸ CARB Staff Report, 9 (Table 6).

⁴⁹ CARB Staff Report, 10–13. These emission reductions are surplus to those relied upon in the control strategy for attaining the 2012 PM_{2.5} NAAQS in the Portola PM_{2.5} Plan because they occur after the December 31, 2021 attainment date and/or will be achieved through implementation of measures adopted after the Plan’s adoption.

⁴⁴ Portola PM_{2.5} Plan, 74.

⁴⁵ 83 FR 64774, 64780–64784 (December 18, 2018) (describing City Ordinance No. 344 and other control measures in the Portola PM_{2.5} Plan as RACM and additional reasonable measures for the 2012 PM_{2.5} NAAQS).

⁴⁶ Compare City Ordinance No. 359, section 15.10.070 with City Ordinance No. 344, section 15.10.060.

provides surplus emission reductions beyond those necessary to demonstrate attainment by the December 31, 2021, Moderate area attainment date for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. While such surplus emission reductions from already implemented measures in the year after the 2021 attainment year cannot constitute contingency measures themselves, we consider them relevant in evaluating the adequacy of the emission reductions that will result from the contingency measure that CARB has proposed to adopt in order to meet the requirements of section 172(c)(9). In light of the ongoing reductions in emissions of direct PM_{2.5} achieved by the District measures and programs identified in the CARB Staff Report, the emission reductions from the District contingency measure (*i.e.*, section 10.050.070 of City Ordinance No. 359) would be sufficient to meet the attainment contingency measure requirement for the 2012 PM_{2.5} NAAQS, even though the measure would achieve emission reductions less than one year's worth of RFP.

3. Revised Contingency Measure for RFP and Quantitative Milestone Purposes

The applicable quantitative milestone dates for the 2012 PM_{2.5} NAAQS in the Portola nonattainment area are October 15, 2019 and October 15, 2022.⁵⁰ On May 5, 2019, CARB submitted the "Portola 2019 Quantitative Milestone Report" ("2019 QM Report") to the EPA.⁵¹ The 2019 QM Report includes a certification from the Governor's designee that the 2019 quantitative milestone for the Portola PM_{2.5} nonattainment area has been achieved and a demonstration that the adopted control strategy has been fully implemented. The 2019 QM Report also contains a demonstration of how the emission reductions achieved to date compare to those required or scheduled to meet RFP. The State and District conclude in the 2019 QM Report that the emission reductions needed to demonstrate RFP have been achieved and that the 2019 quantitative milestone has been met in the Portola nonattainment area. On November 3, 2020, the EPA determined that the 2019 QM Report was adequate.⁵²

Because the State and District have demonstrated that the Portola nonattainment area has met its 2019 quantitative milestones, RFP contingency measures for the 2019 milestone year are no longer needed. The sole purpose of RFP contingency measures is to provide continued progress if an area fails to meet its RFP or quantitative milestone requirements. Failure to meet RFP or quantitative milestone requirements for 2019 would have required California to implement an RFP contingency measure.⁵³ In this case, however, the 2019 QM Report demonstrates that actual emission levels in 2019 were consistent with the approved 2019 RFP milestone year targets for direct PM_{2.5} in the Portola PM_{2.5} Plan and that the adopted control strategy is being implemented as scheduled. Accordingly, RFP contingency measures for 2019 no longer have meaning or purpose, and the EPA proposes to find that the requirement for them is now moot as applied to the Portola nonattainment area.

With respect to the 2022 RFP milestone year, the contingency measure in section 10.050.070 of City Ordinance No. 359 would take effect if the EPA determines that the area has failed to meet a requirement concerning RFP or quantitative milestones⁵⁴ but would not, by itself, be sufficient to achieve emission reductions equivalent to one year's worth of RFP. The CARB Staff Report, however, states that continued implementation of the existing wood-stove changeout program together with several new measures and programs will result in surplus PM_{2.5} emission reductions in the 2022 RFP milestone year and in 2023.⁵⁵ These measures and programs include a chimney sweep voucher program, additional weatherization of homes, wood sheds for households in the nonattainment area to keep firewood dry, and the provision of a reliable and affordable supply of seasoned wood.⁵⁶ The CARB Staff Report states that funds awarded to the District from the EPA's 2018 and 2019/2020 Targeted Airshed Grants will ensure continuous

the 2012 annual PM_{2.5} National Ambient Air Quality Standards.

⁵⁰ 40 CFR 51.1013(a)(1); see also 83 FR 64774, 64790 (December 18, 2018).

⁵¹ Letter dated May 5, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, with enclosure.

⁵² Letter dated November 3, 2020, from Deborah Jordan, Acting Regional Administrator, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, regarding 2019 Quantitative Milestone Report for

⁵³ Under section 189(c)(3) of the CAA, if a state fails to submit a required quantitative milestone report or the EPA determines that the area has not met an applicable milestone, the EPA must require the state, within nine months after such failure or determination, to submit a plan revision that assures that the state will achieve the next milestone (or attain the NAAQS, if there is no next milestone) by the applicable date.

⁵⁴ City Ordinance No. 359, section 10.050.070.

⁵⁵ CARB Staff Report, 14–15.

⁵⁶ *Id.*

education, outreach, and implementation and enforcement of these and additional programs designed to further reduce PM_{2.5} emissions in the Portola nonattainment area after 2022.⁵⁷ In light of these ongoing and additional reductions in emissions of direct PM_{2.5}, the emission reductions from the District's contingency measure (*i.e.*, section 10.050.070 of City Ordinance No. 359) would be sufficient to meet the 2022 RFP contingency measure requirement for the 2012 PM_{2.5} NAAQS, even though the measure would achieve emission reductions less than one year's worth of RFP for the area.

We note that if the EPA determines that the Portola nonattainment area has failed to attain the 2012 PM_{2.5} NAAQS by the December 31, 2021 attainment date and thereby triggers the contingency measure provision in section 10.050.070 of City Ordinance No. 359, the State would be required to submit a replacement contingency measure to address the 2022 milestone date. However, timely submittal of a quantitative milestone report for the 2022 milestone date would, if found adequate by the EPA, moot the contingency measure requirement for this milestone date.

4. Additional Revisions in City Ordinance No. 359

The new prohibition on the open burning of yard waste, related definitions, and limited exemptions in City Ordinance No. 359 are clear and the monitoring, recordkeeping, reporting and other provisions in the ordinance ensure that affected sources and regulators can consistently evaluate and determine compliance with these additional provisions. These revisions are therefore consistent with CAA requirements regarding enforceability.

Additionally, these new provisions in City Ordinance No. 359 comply with CAA section 110(l) because they strengthen the SIP by adding new requirements for the control of PM_{2.5} emissions from open burning activities in the Portola nonattainment area and would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the CAA. Section 193 does not apply to this action because City Ordinance No. 359 does not modify a control requirement in effect before November 15, 1990.⁵⁸ We are not evaluating the

⁵⁷ *Id.*

⁵⁸ City Ordinance No. 359 modifies a control requirement that the EPA approved into the SIP on March 5, 2018 (83 FR 9213) (approving City Ordinance No. 344 into SIP). Upon the EPA's final approval of City Ordinance No. 359 into the SIP, this ordinance (excluding paragraph 15.10.060(B)

stringency of these provisions for compliance with specific CAA control standards at this time and will do so as part of our action on any subsequently submitted attainment plan for the Portola nonattainment area, as appropriate.⁵⁹

The District has excluded from the SIP submission paragraph 15.10.060(B) and sections 15.10.100 and 15.10.110 of City Ordinance No. 359 regarding penalties and violations.⁶⁰ These paragraphs are not necessary for SIP approval and could lead to confusion with respect to similar Federal requirements set forth in CAA section 113.

VI. Proposed Actions and Request for Public Comment

The EPA is proposing to approve the contingency measure element of the Portola PM_{2.5} Plan, as revised and supplemented by the Proposed PM_{2.5} Plan Revision, as meeting the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. Our proposed approval is contingent upon the State's submission of the final, adopted PM_{2.5} Plan Revision in time for the EPA to finalize this action by March 1, 2021, our court-ordered deadline for taking final action on the contingency measure element of the Plan. The EPA also proposes to find that the requirement for RFP contingency measures for the 2019 milestone date is moot as applied to the Portola nonattainment area, because the State's and District's 2019 QM Report adequately demonstrates that the emission reductions needed to demonstrate RFP have been achieved and that the 2019 quantitative milestone has been met in the Portola nonattainment area.

The EPA is proposing, in the alternative, to disapprove the contingency measure element of the Portola PM_{2.5} Plan, as submitted February 28, 2017 (section VI.B of the

Plan), if the State fails to adopt and submit the PM_{2.5} Plan Revision in time for the EPA to take final action by March 1, 2021, because the contingency measure element of the Plan as submitted February 28, 2017, fails to satisfy the contingency measure requirements in CAA section 172(c)(9) and 40 CFR 51.1014.

If we finalize the proposed disapproval, the offset sanction in CAA section 179(b)(2) would apply in the Portola PM_{2.5} nonattainment area 18 months after the effective date of the final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. These sanctions would apply unless we take final action to approve SIP revisions that meet the relevant CAA requirements prior to the time the sanctions would take effect. In addition to the sanctions, CAA section 110(c) provides that the EPA must promulgate a Federal implementation plan addressing the deficiency that is the basis for a disapproval, two years after the effective date of the disapproval, unless we have approved a revised SIP submission correcting the deficiency before that date.

Finally, the EPA is proposing to approve the new provisions in City Ordinance No. 359 concerning open burning of yard wastes and other debris, including related definitions and exemptions. These provisions strengthen the SIP and are consistent with CAA requirements regarding enforceability and SIP provisions. At the State's and District's request, we are not acting on paragraph 15.10.060(B), section 15.10.100, or section 15.10.110 of City Ordinance No. 359.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

VII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the CARB measure described in Section II of this preamble (City Ordinance No. 359). The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

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

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

and sections 15.10.100 and 15.10.110) will entirely replace City Ordinance No. 344. NSAQMD, Resolution 2020-09 (October 26, 2020), 4 (para. 9).

⁵⁹ The EPA previously determined that the Portola PM_{2.5} Plan contains all RACM necessary for expeditious attainment of the 2012 PM_{2.5} NAAQS by the December 31, 2021 Moderate area attainment date. 84 FR 11208 (March 25, 2019). If the EPA determines that the Portola nonattainment area has failed to attain the NAAQS by this date, the area will be reclassified as a Serious area, and the State will be required to submit a revised attainment plan for the area that provides for the implementation of best available control measures (BACM) within four years after such reclassification. CAA sections 188(b)(2) and 189(b)(1)(B).

⁶⁰ NSAQMD, Resolution 2020-09 (October 26, 2020), 3 (paragraphs. 6, 7).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: November 17, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–26648 Filed 12–2–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2020–0106]

RIN 2127–AM15

Framework for Automated Driving System Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: NHTSA is requesting comment on the development of a framework for Automated Driving System (ADS) safety. The framework would objectively define, assess, and manage the safety of ADS performance while ensuring the needed flexibility to enable further innovation. The Agency is seeking to draw upon existing Federal and non-Federal foundational efforts and tools in structuring the framework as ADS continue to develop. NHTSA seeks specific feedback on key components that can meet the need for motor vehicle safety while enabling innovative designs, in a manner consistent with agency authorities.

DATES: Written comments are due no later than February 1, 2021.

ADDRESSES: Comments must refer to the docket number above and be submitted by one of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery or Courier:** U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

- **Fax:** 202–493–2251.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document.

Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>. Please see the “Privacy Act” heading below.

You may call the Docket Management Facility at 202–366–9322. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. To be sure someone is there to help you, please call (202) 366–9322 before coming. We will continue to file relevant information in the Docket as it becomes available.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>.

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

FOR FURTHER INFORMATION CONTACT:

For legal issues, Sara R. Bennett, Attorney-Advisor, Vehicle Rulemaking and Harmonization, Office of Chief Counsel, 202–366–2992, email Sara.Bennett@dot.gov.

For research issues, Lori Summers, Director, Office of Vehicle Crash Avoidance and Electronic Controls Research, telephone: 202–366–4917, email Lori.Summers@dot.gov.

For rulemaking issues, Tim J. Johnson, Acting Director, Office of

Crash Avoidance Standards, telephone 202–366–1810, email Tim.Johnson@dot.gov.

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I. Executive Summary

Over the past several years, NHTSA has published numerous research reports, guidance documents, advance notices of proposed rulemakings, and, on March 30, 2020 (85 FR 17624), a notice of proposed rulemaking relating to the development of vehicles equipped with Automated Driving Systems (ADS).¹ An ADS is the

¹ ADS, as defined by SAE International and as used in this document, refers to driving automation

hardware and software that are, collectively, capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain (ODD).² In less technical terms, an ADS maintains the control and driving functions within the situations that the system is designed to operate in.

In general, the Agency's ADS-related publications issued so far address the challenges involved in determining which requirements of the existing Federal Motor Vehicle Safety Standards (FMVSS) are relevant to the safety needs of ADS-equipped vehicles without traditional manual controls, and then adapting or developing the requirements and the associated test procedures so that the requirements can effectively be applied to the novel vehicle designs that may accompany such vehicles without adversely affecting safety. Thus, those notices, particularly the Agency's regulatory notices, have focused more on the design of the vehicles that may be equipped with an ADS—not necessarily on the performance of the ADS itself. NHTSA has also published recommendations to ADS developers, including automakers and technology companies, most prominently in *Automated Driving Systems 2.0: A Vision for Safety*. The Agency has also proposed in a notice-and-comment rulemaking to remove unintended and unnecessary regulatory barriers (e.g., proposing to remove the requirement for installation of advanced air bag systems in delivery trucks with no occupant compartment) or other impediments to the development or deployment of vehicles with ADS. This approach has been appropriate as a means to pave the

way for the safe development and eventual deployment of ADS technology, particularly because the Agency understands that ADS-equipped vehicles are likely to remain in the pre-deployment testing and development stage for at least the next several years. Further, as small-scale deployments start to appear in the coming years, NHTSA will address unreasonable safety risks that may arise using its defect investigation and remediation authority.

Though wide-scale deployment still may be several years away, many companies are actively developing and testing ADS technology throughout the United States. This development process for ADS is complex and iterative. Accordingly, it may be premature for NHTSA to develop and promulgate a specialized set of FMVSS or other performance standards for ADS competency. NHTSA's existing FMVSS set minimum performance requirements for vehicles and equipment, and they follow an approach that is performance-based, objective, practicable, and established with precise and repeatable test procedures.³

The development of an FMVSS typically requires significant engineering research, the development of an objective metric (i.e., knowing what aspect or aspects of performance to measure), and the establishment of an appropriate standard based upon that metric (i.e., specifying the minimum required level of performance). Premature establishment of an FMVSS without the appropriate knowledge base could result in unintended consequences. For example, a premature standard might focus on the wrong metric, potentially placing constraints on the wrong performance factors, while missing other critical safety factors. Such a standard could inadvertently provide an unreliable sense of security, potentially lead to negative safety results, or potentially hinder the development of new ADS technology.

Safety Framework

Although the establishment of an FMVSS for ADS may be premature, it is appropriate to begin to consider how NHTSA may properly use its regulatory authority to encourage a focus on safety as ADS technology continues to develop. This document, thus, marks a significant departure from the regulatory notices NHTSA has previously issued

on ADS because NHTSA is looking beyond the existing FMVSS and their application to novel vehicle designs and is considering the creation of a governmental safety framework specifically tailored to ADS.

Rather than elaborating and prescribing by rule specific design characteristics or other technical requirements for ADS, NHTSA envisions that a framework approach to safety for ADS developers would use performance-oriented approaches and metrics that would accommodate the design flexibility needed to ensure that manufacturers can pursue safety innovations and novel designs in these new technologies. This framework could involve a range of actions by NHTSA, including guidance documents addressing best industry practices, providing information to consumers, and describing different approaches to research and summarizing the results of research, as well as more formal regulation, from rules requiring reporting and disclosure of information to the adoption of ADS-specific FMVSS. These different approaches would likely build off the three primary ADS guidance documents issued in recent years by DOT (i.e., ADS 2.0, *Preparing for the Future of Transportation: Automated Vehicles 3.0* (AV 3.0), and *Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0* (AV 4.0)). As described in this document, NHTSA seeks comment on the appropriate role of the Agency in facilitating ADS risk management through guidance and/or regulation.

This document focuses on ways the Agency could approach the performance evaluation of ADS through a safety framework, containing a variety of approaches and mechanisms that, together, would allow NHTSA to identify and manage safety risks related to ADS in an appropriate manner. NHTSA anticipates focusing this framework on the functions of an ADS that are most critical for safe operation.

At this stage, NHTSA believes there are four primary functions of the ADS that should be the focus of the Agency's attention. First, how the ADS receives information about its environment through sensors ("sensing"). Second, how the ADS detects and categorizes other road users (vehicles, motorcyclists, pedestrians, etc.), infrastructure (traffic signs, signals, etc.), and conditions (weather events, road construction, etc.) ("perception"). Third, how the ADS analyzes the situation, plans the route it will take on the way to its intended destination, and makes decisions on how to respond

Levels 3–5. SAE International J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On Road Motor Vehicles. Previous notices issued by NHTSA focused on driving automation Levels 4 and 5, due to the unique vehicle designs expected for vehicles intended to operate without necessary human intervention, and thus, potentially designed without traditional manual controls.

This document does not focus on any particular vehicle type, but rather, on the ADS itself. NHTSA recognizes that the vehicle type for which the ADS is developed to operate may impact the resulting ADS performance, but the Agency is not delving into this level of specificity at this time.

Finally, the major notices that NHTSA has published in the past several years are: *Removing Regulatory Barriers for Vehicles With Automated Driving Systems Request for Comment*, 83 FR 2607 (Jan. 18, 2018); *Removing Regulatory Barriers for Vehicles With Automated Driving Systems Advance Notice of Proposed Rulemaking*, 84 FR 24433 (May 28, 2019); *Occupant Protection for Automated Driving Systems Notice of Proposed Rulemaking*, 85 FR 17624 (Mar. 20, 2020).

² SAE International J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

³ See 49 U.S.C. 30111(a); *Chrysler Corp. v. Dep't of Transp.*, 472 F.2d 659 (6th Cir. 1972); *Nat'l Tire Dealers & Retreaders Ass'n, Inc. v. Brinegar*, 491 F.2d 31 (D.C. Cir. 1974); *Paccar, Inc. v. Nat'l Highway Traffic Safety Admin.*, 573 F.2d 632 (9th Cir. 1978).

appropriately to the road users, infrastructure, and conditions detected and categorized (“planning”). Fourth, how the ADS executes the driving functions necessary to carry out that plan (“control”) through interaction with other parts of the vehicle. While other elements of ADS safety are discussed throughout this document, these four primary functions serve as the core elements NHTSA is considering.

The Agency anticipates that the safety framework would include both process and engineering measures to manage risks. The process measures (*e.g.*, general practices for analyzing, classifying by severity level and frequency, and reducing potential sources of risks during the vehicle design process) would likely include robust safety assurance and functional safety programs. The engineering measures (*e.g.*, performance metrics, thresholds, and test procedures) would seek to provide ways of demonstrating that ADS perform their sensing, perception, planning, and control (*i.e.*, execution) of intended functions with a high level of proficiency.

Administration of a Framework

NHTSA is seeking comment on the manner in which the framework can and should be administered (*e.g.*, guidance, consumer information, or regulation) to support agency oversight of ADS-related aspects. Since some of the mechanisms described in this document (*e.g.*, guidance) could be implemented more quickly than others (*e.g.*, FMVSS), the mechanisms could be adopted, when and as needed, in a phased manner, and implementation of some types of mechanisms might end up not being necessary. This document will go into greater detail on the various types of administrative mechanisms upon which the Agency is seeking comment in later sections.

Future of ADS Regulation

Eventually, non-regulatory aspects of the framework, combined with information learned from research and the continued development of ADS, could serve as the basis for development of FMVSS governing the competence of ADS. The sub-elements of the sensing, perception, planning, and control functions could evolve into new FMVSS focused entirely on ADS competence. A new generation of FMVSS should give the manufacturers of vehicles, sensors, software, and other technologies needed for ADS sufficient flexibility to change and improve without the need for frequent modifications to the regulations. If new FMVSS were

developed and adopted, they could be applied on an “if-equipped” basis to existing traditional classes of vehicles (*e.g.*, passenger cars, multipurpose passenger vehicles, buses, and trucks). By an “if-equipped” FMVSS, NHTSA means an FMVSS that would not mandate the installation of ADS in motor vehicles, but would instead specify performance requirements for those vehicles equipped with ADS. Similarly, a new FMVSS could be applied to the entire vehicle of new classes of vehicles, *i.e.*, subclasses of vehicles equipped with ADS. In making this choice, the administrative feasibility of creating, updating, and implementing requirements for multiple subclasses would need to be carefully considered.

Comments Requested

NHTSA seeks comments on how to select and design the structure and key elements of a framework and the appropriate administrative mechanisms to achieve the goals of improving safety, mitigating risk, and enabling the development and introduction of new safety innovations. To aid interested persons in forming their views and preparing their comments, this document surveys ongoing efforts in the private and public sectors to create a safety framework.

In their written submissions, commenters should discuss, for example, what engineering and process measures should be included, and what aspects of ADS performance are suitable for potential safety performance standard setting (*i.e.*, what aspects of ADS performance should manufacturers be required to certify that their system possess? Of the many aspects of sensing, perception, planning, and control that manufacturers will need to prove for their own purposes, the Agency wishes to know which aspects would be so important that they should be subject to separate Federal regulations. The Agency also wishes to hear from the public on whether ADS-specific regulations are appropriate or necessary prior to the broad commercial deployment of the technology, and, if so, how regulations could be developed consistent with the Agency’s legal obligations without being based upon the existence of commercially available ADS technology from which to measure required performance. The Agency also seeks comment on how the need for and benefits of issuing regulations can be assessed before ADS become available to allow testing and validation of the assumptions supporting those needs and benefits. In addition, the Agency seeks comment on which type or types

of administrative mechanisms would be most appropriate for constructing the framework, either in general or for its component parts, and ensuring its effective and efficient implementation.

II. Introduction

A. Development of ADS

The development of ADS⁴ continues and is well under way. Developers are testing components and systems through simulation and modeling, controlled track testing, and limited on-road testing with test vehicle operators and monitors, and, in some cases, limited on-road deployments. The Agency believes these activities will continue to increase.⁵

In July 2020, NHTSA identified on-road testing and development activities in 40 States and the District of Columbia.⁶ At the same time, 66 companies in California, one of the main hubs of testing activity in the world, had valid State permits to test ADS-equipped vehicles with safety drivers on public roadways.⁷ Two of those companies also received permits allowing for driverless testing in California.⁸ One of those companies received permission from California in July 2019 to carry passengers in its ADS-equipped vehicles while a safety driver is present.⁹ In the Phoenix area, one company is even providing limited rideshare services to participants in its testing program without an in-vehicle safety driver. This same company recently announced that it is expanding these rideshare services.¹⁰ One manufacturer of small, low-speed, occupant-less delivery vehicles, received a temporary exemption from NHTSA to deploy up to 2,500 vehicles per year for two years.¹¹ That same company has also received a permit

⁴ The term “ADS” specifically refers to SAE Level 3, 4, or 5 driving automation systems as described in SAE International J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On Road Motor Vehicles.

⁵ Some examples of companies planning on the ride-sharing or delivery business models include Cruise, Waymo, Argo AI, Uber, Lyft, Nuro.

⁶ NHTSA notes that the State count includes active (ongoing), planned, and inactive (completed) projects.

⁷ <https://www.dmv.ca.gov/portal/dmv/detail/vr/autonomous/permit>.

⁸ <https://www.dmv.ca.gov/portal/dmv/detail/vr/autonomous/driverlesstestingpermits>.

⁹ Other companies have received permission to carry passengers in their ADS-equipped vehicles while a safety driver is present, and they are listed here: <https://www.cpuc.ca.gov/avcissued/>.

¹⁰ <https://blog.waymo.com/2020/10/waymo-is-opening-its-fully-driverless.html>.

¹¹ 85 FR 7826 (Feb. 11, 2020).

from California to perform driverless testing.¹²

As described in AV 3.0, ADS development does not start with public, on-road testing. Rather, much of the very early testing of prototype ADS by developers is conducted in simulation and/or closed-course (*i.e.*, track) testing environments.¹³ Public road testing of a prototype ADS typically begins after significant engineering and safety analysis are performed by developers to understand safety risks and mitigation strategies are put in place to address those risks. It is important to note that the development process is generally both iterative and cyclical. A developer does not “graduate” from simulation to track test, and then to on-road testing, and then deployment. Instead, developers will generally continue simulation testing throughout the development process to gain additional experience with various scenarios that may be encountered rarely in the real world. Similarly, track testing designed to resemble scenarios that may be encountered rarely or that would be dangerous to attempt on public roads until later stages of readiness will occur throughout the process, even as on-road testing is occurring. Further, experiences gained from on-road testing will often lead to simulation and/or test track replication of situations encountered on public roads to improve the ADS. In other words, the fact that a vehicle is being tested on public roads does not mean that the vehicle or ADS is nearing deployment readiness and, conversely, the fact that a vehicle is still undergoing simulation or track testing does not mean it is not safe to be tested on public roads.

NHTSA’s understanding is that there are generally different stages of safety risk management during the on-road testing of prototype ADS.¹⁴ First is the development and early stage road testing, which is often comprised of the characteristics such as safety drivers serving key safety risk mitigation roles, rapid updating of ADS software to incorporate lessons learned, and focus on validating the performance of the ADS from the simulation and close-course testing environments. Second, once development progresses, companies may expand ADS road testing and focus on building confidence in the ADS within the locations and situations in which the

system is designed to function (*i.e.*, operational design domain).¹⁵ The primary purpose of this stage of testing is to build statistical confidence in matured software and hardware within the intended operational environment and observe system failures, safety driver subjective feedback, and execution of fail-safe/fail-operational system behaviors. Third, and finally, ADS developers may progress to deployment of ADS, in either limited or full capacity.

As stated in AV 3.0, NHTSA believes that on-road testing is essential for the development of ADS-equipped vehicles that will be able to operate safely on public roads. Most of the ADS testing activity in the United States is in the early stages of on-road testing. Safety drivers oversee the ADS during testing for most companies, though some companies have progressed to the later stages of on-road testing. Despite this development and all the progress the industry has made over the past several years, no vehicle equipped with an ADS is available for purchase in the United States or deployed across the United States.¹⁶

NHTSA recognizes the critical role that State and local governments play in traffic safety, including our shared oversight of on-road testing of vehicles with ADS. Their roles in the active on-road testing and development throughout the country is part of why NHTSA recently launched its Automated Vehicles Transparency and Engagement for Safe Testing (AV TEST) Initiative to facilitate further dialogue and transparency of the state of ADS development. This initiative features a series of meetings and workshops where State and local governments discuss their activities, lessons learned, and best practices for oversight of on-road testing, and NHTSA discusses its research and rulemaking activities. The

initiative also involves automakers and ADS developers, and provides a forum to promote public engagement and knowledge-sharing about safety in the development and testing of ADS-equipped vehicles. The AV TEST Initiative will also provide an online, public-facing platform for sharing ADS road testing activities and other relevant information at the local, State, and national levels. It will feature an online mapping tool that will show road testing locations, as well as testing activity data such as dates, frequency, vehicle counts, and routes.

B. Potential Benefits of ADS

NHTSA’s mission is to save lives, prevent injuries, and reduce economic costs due to road traffic crashes, through education, research, guidance, safety standards, and enforcement activity. If developed and deployed safely, ADS can aid in achieving that mission, given their potential to prevent, reduce, or mitigate crashes involving human error or poor choices. This potential stems from the substantial role that human factors (distraction, impairment, fatigue, errors in judgment, and decisions not to obey traffic laws) play in contributing to crashes.¹⁷ In addition, they have the potential to enhance accessibility (*e.g.*, through allowing personal transportation to people with disabilities or people incapable of driving), and improve productivity (*e.g.*, by allowing people to work while being transported and allowing platooning or entirely automated operation of commercial trucks). Accordingly, NHTSA is placing a priority on the safe development and testing of ADS that factors safety into every step toward eventual deployment.

C. NHTSA Regulatory Activity To Remove Unintentional and Unnecessary Barriers to the Development and Deployment of ADS Vehicles

To date, NHTSA’s regulatory notices have focused on ADS-equipped vehicles without traditional manual controls by assessing the modifications to existing FMVSS that may be necessary to address the designs and any unique safety needs of those vehicles.¹⁸ For example, while vehicles that cannot be driven by human drivers and vehicles that can be driven by human drivers both need brakes that stop them effectively, each set of vehicles may have different safety needs. Traditional

¹² <https://www.dmv.ca.gov/portal/dmv/detail/vr/autonomous/driverlesstestingpermits>.

¹³ <https://www.transportation.gov/av/3>.

¹⁴ <https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/automated-vehicles/320711/preparing-future-transportation-automated-vehicle-30.pdf>.

¹⁵ Operational design domain (ODD) is the operating conditions under which a given driving automation system or feature thereof is specifically designed to function, including, but not limited to, environmental, geographical, and time-of-day restrictions, and/or the requisite presence or absence of certain traffic or roadway characteristics. SAE International J3016, 201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On Road Motor Vehicles.

¹⁶ While Nuro was granted an exemption allowing for deployment of their low-speed, occupantless delivery vehicle, the terms of the exemption provide that Nuro must maintain ownership and operational control over the R2Xs that are built pursuant to the exemption for the life of the vehicles. See Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System, 85 FR 7826 (Feb. 11, 2020), available at <https://www.federalregister.gov/documents/2020/02/11/2020-02668/nuro-inc-grant-of-temporary-exemption-for-a-low-speed-vehicle-with-an-automated-driving-system>.

¹⁷ See Critical Reasons for Crashes Investigated in the National Motor Vehicle Crash Causation Survey (Feb. 2015), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812115>.

¹⁸ See 84 FR 24433 (May 28, 2019) and 85 FR 17624 (Mar. 30, 2020).

vehicles rely on human drivers, while the ADS-equipped vehicles rely on an ADS to acquire information about the location and movement of other roadway users, weather conditions, and vehicle operating status—all while making driving decisions. These differing safety needs may mean that the installation of some features currently required by the FMVSS (e.g., mirrors, dashboard controls, some displays) into vehicles without traditional manual driving controls may no longer meet a need for safety. Further, while steering machines and other equipment can be made to simulate human drivers in conducting the track testing of vehicles with manual controls, having NHTSA instruct the ADS of a vehicle that lacks manual controls how to perform the same testing may be more challenging.

D. Need for a Safety Framework, Including Implementation and Oversight Mechanisms, for Federal Efforts To Address ADS Performance

The National Traffic and Motor Vehicle Safety Act of 1966, as amended (“Safety Act”) tasks NHTSA with reducing traffic accidents, deaths, and injuries resulting from traffic accidents through issuing motor vehicle safety standards for motor vehicles and motor vehicle equipment and carrying out needed safety research and development.¹⁹ The FMVSS established by NHTSA must: Meet the need for motor vehicle safety; be practicable, both technologically and economically; and be stated in objective terms. The final requirement means that they are capable of producing identical results when test conditions are exactly duplicated and determinations of compliance must be based on scientific measurements, not subjective opinion.²⁰ In addition, in issuing an FMVSS, the Agency must consider whether the standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed.²¹

NHTSA typically begins the process of promulgating a FMVSS by identifying the aspect of performance that may need regulation (i.e., the safety need²²). NHTSA analyzes real-world crash data and other available information in order to identify safety issues and quantify the size of the safety problems, researches

potential solutions or countermeasures to the safety issues that have been identified, and then develops practicable performance or related requirements intended to either resolve or mitigate the crash risk identified. Manufacturers are then required to self-certify, by whatever reasonable means they choose, that their vehicles or equipment meet the performance requirements. Finally, NHTSA assesses vehicle or equipment compliance with those established requirements through the validated test procedures that it has developed.

Based on the current state of ADS development, it is probably too soon to make any decisions about the extent to which new FMVSS might be needed to address particular aspects of the safety performance of these systems. ADS are, generally, in the development stages, and market-ready, mature ADS do not yet exist. Accordingly, there do not exist meaningful data about the on-road experience of these systems that can be analyzed to determine the safety need that potentially should be addressed, e.g., which aspects of performance are in need of regulation, what would be reasonable, practicable, or appropriate for regulation, or the minimum thresholds for performance, much less how to regulate such performance. Likewise, there are no vehicles equipped with mature ADS that can be purchased by the Agency and tested to validate the effectiveness of a contemplated standard in addressing the safety needs of those vehicles.

NHTSA has no desire to issue regulations that would needlessly prevent the deployment of any ADS-equipped vehicle, as this could inhibit the development of a promising technology that has the potential to result in an unprecedented increase in safety. Any regulatory approach must have well-founded supporting data indicating safety needs. An ill-conceived standard may fail to meet the need for motor vehicle safety and needlessly stifle innovation. Worse yet, issuing premature regulations could even increase safety risk with unintended consequences. Pursuing a “precautionary” FMVSS may, in fact, be prohibited by the Safety Act itself, as sufficient information does not yet exist to establish a standard that is practicable, meets the need for motor vehicle safety, and can be stated in objective terms.

It is not too soon, however, for the Agency, with input from stakeholders, to begin identifying and developing the elements of a framework that meets the need for motor vehicle safety and assesses the degree of success in

manufacturers’ efforts to ensure safety, while also providing sufficient flexibility for new and more effective safety innovations. In addition, NHTSA seeks to explore the adoption of alternative or complementary mechanisms for implementing potential engineering and process measures, as described below, to manage risks and facilitate agency safety oversight.

NHTSA seeks to develop a safety framework of standards and/or guidance that manufacturers of ADS would (or, in the case of guidance, could) follow to evaluate and demonstrate the safety of their new systems, as produced and, at least in some cases, throughout the lifetime of those systems. The framework would rest on the elements described below in section III of this document.

In addition, the Agency seeks to identify the best administrative mechanisms for establishing and implementing engineering and process measures and facilitating agency safety oversight. Potential mechanisms are described in section IV of this document.

III. Safety Framework—Core Elements, Potential Approaches, and Current Activities

Safety assurance generally refers to the broad array of proactive approaches a company can take proactively to identify and manage potential safety risks associated with a system, such as the ADS of a vehicle. Safety assurance, as contemplated in many of the documents discussed in this section, is typically a process controlled and conducted by the manufacturer that is designing a vehicle and certifying that vehicle’s compliance. Many of these process and engineering measures are used by manufacturers in the development of their products, and NHTSA intends to explore how the Agency might harness these same processes in the development of a new regulatory or sub-regulatory approach to evaluate the safety of ADS.

The Department’s guidance documents on vehicles equipped with ADS, ADS 2.0²³ and *Preparing for the Future of Transportation: Automated Vehicles 3.0*,²⁴ generally describe these aspects of safety assurance and how the Department envisions its role in safety risk management and oversight during the development and deployment of ADS.

²³ Pages 5–16. Available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0_090617_v9a_tag.pdf.

²⁴ See table on page 50. Available at <https://www.transportation.gov/av/3>.

¹⁹ 49 U.S.C. 30101.

²⁰ 49 U.S.C. 30111(a), *Chrysler Corp. v. Dep’t of Transp.*, 472 F.2d 659 (6th Cir. 1972).

²¹ 49 U.S.C. 30111(b)(3).

²² “The Safety Act’s mandate is not, however, categorical. Not all risks of accident or injury are to be eliminated, but only those that are ‘unreasonable.’” *Ctr. for Auto Safety v. Peck*, 751 F.2d 1336, 1343 (D.C. Cir. 1985).

This section elaborates on the core elements of ADS safety performance and the documents behind the various elements of the safety framework for ADS that NHTSA is currently considering. This section also describes some of the many private and public activities related to evaluating ADS safety performance.

A. Engineering Measures—Core Elements of ADS Safety Performance

Engineering measures are those aspects that can be readily determined through the testing of a finished motor vehicle or system and establish the level of safety performance. Engineering measures could be used to assess safety performance of the ADS, such as successful crash avoidance (*i.e.*, whether the ADS-equipped vehicle is capable of completing certain maneuvers without loss of control), but how exactly to design these measures is highly complicated. While a mature ADS may avoid many of the human driver errors and poor choices that lead to the majority of crashes today, an ADS may still find itself in crash-imminent scenarios that may warrant emergency maneuvers. Successful crash avoidance would depend on a vehicle's mechanical abilities (*e.g.*, abilities to stop quickly and to maintain or regain directional stability and control). ADS-equipped vehicles, though, are unique in that the vehicle's system must also be able to perform appropriately the following safety relevant functions that are inherent to the adequate functionality of an ADS-equipped vehicle:

- Sensing;
- Perception;
- Planning; and
- Control.

1. Core ADS Safety Functions

“Sensing” refers to the ability of the ADS to receive adequate information from the vehicle's internal and external environment through connected sensors. Sensors on an ADS-equipped vehicle might include cameras, radar, LiDAR, Global Positioning Satellite (GPS), vehicle-to-vehicle (V2V) and/or vehicle-to-everything (V2X) devices, among other technologies. Sensing also involves scanning the driving environment with emphasis on the direction of travel in which the ADS intends to head. The sensing functionality serves as the “eyes” of the ADS.

“Perception” refers to the ability of an ADS to interpret information about its environment obtained through its sensors. This involves an ADS determining the location of the vehicle

in relation to the driving environment and its ODD, including whether it is operating within any geolocational limitations in the ODD. Perception includes detection and identification of relevant static features and objects (*e.g.*, road edges, lane markings, and traffic signs) and dynamic objects (*e.g.*, vehicles, cyclists, and pedestrians) detected by sensors within proximity of the vehicle. Through perception, the ADS is provided with information necessary to predict the future behavior (*e.g.*, speed and path) of relevant static and dynamic objects (*i.e.*, those whose speed and path may create the risk of a collision with the vehicle). Thus, while sensing serves as the “eyes” of the ADS, perception performs the associated cognitive recognition of information detected through the sensor's “eyes.” Perception provides necessary interpreted information to the system so that it can conduct other key functions for successful completion of the driving task.

“Planning” refers to the ability of an ADS to establish and navigate the route it will take on the way to its intended destination. The planning function of an ADS builds from the sensing and perception functions by using the information collected through sensing and interpreted through perception, and predicts the future state of static and dynamic objects to create a path that mitigates crash risks, follows rules of the road,²⁵ and safely reaches its intended destination. If the perception function is akin to the part of the brain

²⁵ NHTSA notes that, while compliance with many rules of the road can be readily and objectively determined, compliance with others cannot. The rule to obey posted speed limits is an example of the former. If a vehicle has mapped or can read posted speed limit signs, it can readily compare its speed with the posted speed and modulate its speed accordingly to avoid exceeding the limit. However, achieving compliance with situational or judgmental rules, such as those prohibiting driving too fast for conditions or driving recklessly, is much less readily determinable by a vehicle. *See., e.g., Formalising and Monitoring Traffic Rules for Autonomous Vehicles in Isabelle/HOL*, Albert Rizaldi, Jonas Keinholz, Monika Huber, Jochen Feldle, Fabian Immler, Matthias Althoff, Eric Hilgendorf, and Tobias Nipkow. <https://www21.in.tum.de/~nipkow/pubs/ifm17.pdf>. Substantial compliance by a vehicle with the rule against driving recklessly might be indirectly achievable through programming the vehicle to drive defensively. One aspect of that programming would be to ensure that the vehicle always maintains a safe driving distance between itself and the vehicle immediately ahead, including any vehicle that cuts into the vehicle's lane. This notion of a safe space could also be made to vary according to whether the vehicle detects conditions such as darkness, rain, or loss of traction. *See., e.g., On a Formal Model of Safe and Scalable Self-driving Cars*, Shai Shalev-Shwartz, Shaked Shammah, Amnon Shashua, Mobileye, 2017. <https://arxiv.org/pdf/1708.06374.pdf>. The amount of space needed by the vehicle would vary according to the vehicle's speed.

of an ADS responsible for cognitive interpretation, the planning function is equivalent to that part of the brain of the ADS responsible for decision-making.

Finally, the “control” function of an ADS refers to the ability of the system to execute the driving functions necessary to carry out the continuously updated driving plan. Control includes implementing the driving plan by delivering appropriate control inputs—such as steering, propulsion, and braking—to follow the planned path while adjusting the plan when and as necessary based on the continuous acquisition and processing of new data concerning the state of the vehicle and surrounding environment. The control function, carried out through actuators and their associated control systems that facilitate execution of the driving plan, are analogous to the “arms” and “legs” of the ADS in driving the vehicle.

NHTSA requests comment on these four core functions, including whether commenters agree that these are the core functions, views on NHTSA's description of these functions, and whether and how NHTSA should prioritize its research as it develops a safety framework.

2. Other Safety Functions

While the four functions described above are necessary for an ADS, they are not necessarily sufficient to ensure ADS safety, which will also depend on a wide array of other functions and capabilities of the system and how that system interacts with the humans both inside and surrounding the ADS-equipped vehicle.

For example, one safety-related aspect not encompassed within the four functions would be the vehicle's ability to communicate with vehicle occupants²⁶ and other vehicles and people in the driving environment, especially vulnerable road users.²⁷ The human-machine interaction is expected to have an impact not only on the operational safety of an ADS-equipped vehicle, but also on the public acceptance of such systems. ADS capability to detect the malfunction of its own system or other systems in the

²⁶ For instance, if a vehicle stops, passengers have an interest in knowing the vehicle's status. Did it stop because it reached its destination, to avoid an obstacle, or because of a malfunction? Should passengers remain in the vehicle or is it safe to exit?

²⁷ A driver's eye contact, hand gestures, and even his/her mere presence means something to others outside the vehicle. An empty vehicle, especially an electric ADS-equipped vehicle without traditional manual driving controls, may appear to be parked and in the off position when in fact it is ready to move. Someone approaching the vehicle (passenger, law enforcement, rescuers, tow truck operators, etc.) has an interest in knowing whether it is about to move and how to safely interact with the vehicle.

vehicle accurately and reliably, while also ensuring safe transitions between operational modes developed to respond to any detected issues or malfunctions (e.g., fail safe or limp home modes), is another important consideration that could impact expected performance by an ADS.

Other aspects that could impact the ability of an ADS to carry out its intended plans in a safe and reliable manner include: (1) Identifying reduced system performance and/or ODD in the presence of failure; (2) operating in a degraded mode within reduced system constraints;²⁸ (3) performing the essential task of transporting occupants or goods from starting point to the chosen destination; (4) recognizing and reacting appropriately to communications from first responders, including fire, EMS, and law enforcement;²⁹ (5) receiving, loading, and following over-the-air software updates;³⁰ (6) performing system maintenance and calibration; (7) addressing safety-related cybersecurity risks; and (8) system redundancies. NHTSA notes that its authorities under the Safety Act are limited to motor vehicle safety and, thus, do not authorize the Agency to regulate areas such as general privacy and cybersecurity unrelated to safety.³¹ That said, NHTSA will analyze relevant aspects of these issues during the rulemaking process to the extent required under the Safety Act and when otherwise required by applicable laws, such as the E-Government Act of 2002.

NHTSA requests comment on which of these aspects the Agency should prioritize as it continues the research necessary to develop a safety framework. NHTSA also seeks comment on whether it has an appropriate role to play with any or all of these elements

outside of research. If so, which element(s)? For each such element, should NHTSA's role be regulatory or sub-regulatory, and in what manner?

3. Federal Engineering Measure Development Efforts

NHTSA, as part of the Department's broader efforts, has begun the research to explore potential ways the Agency can assess the safety of ADS. As described in AV 4.0, NHTSA maintains a comprehensive ADS research program evaluating and researching a wide array of aspects related to ADS performance.³² One of NHTSA's key research tracks focuses on ADS safety performance, and seeks to identify the methods, metrics, and tools to assess how well the ADS-equipped vehicle performs both normal driving tasks as well crash avoidance capabilities. Such assessments include system performance and behavior relative to the system's stated ODD and object and event detection and response (OEDR) capabilities, as well as fail-safe capabilities if/when it is confronted with conditions outside its ODD. A second high-level research focus is on functional safety and ADS subsystem performance. A third research area relevant to this document relates to the cybersecurity of vehicles and systems, including ADS. Finally, NHTSA is also researching human factors issues that may accompany vehicles equipped with ADS.

One key example of NHTSA's efforts to develop safety performance models and metrics is the Instantaneous Safety Metric (ISM)—a research document published in 2017.³³ The ISM calculates physically possible trajectories that a subject vehicle and other roadway users in the surrounding traffic could take given a set of possible actions (e.g., steering wheel angles, brake/throttle) within a preset, finite period of time in the future and calculates which trajectory combinations could result in a potential multi-actor crash. A metric determined by the number and/or proportion of trajectories (and severity/probability of the action that leads to that trajectory) that may lead to a crash could serve as a proxy for the estimated safety risk associated with the given snapshot of the driving state.

An updated approach, referred to as the Model Predictive Instantaneous Safety Metric (MPriSM), builds upon the ISM concept and modifies its assessment method.³⁴ MPriSM considers the subject vehicle's range of fully controllable actions and calculates crash implications under the scenario of best response choices by the subject vehicle and worst choices by other actors in the scene.

One of the benefits of ISM and MPriSM is their relatable logical reasoning and straight-forward analytical construction. However, ISM is not without its challenges in administering in real-world applications. One of those challenges is the significant computational complexity required for effective utilization. MPriSM attempts to address this computational complexity and can be run using real time data at reasonable processing rates. Through new metric development efforts such as MPriSM, NHTSA will continue researching ways to reduce complexity while also evaluating private sector approaches with a goal of facilitating the advancement of candidate safety performance models and metrics.

4. Other Notable Efforts Under Consideration as Engineering Measures

Various companies and organizations have begun efforts to develop a framework or at least portions of one. For example, in 2018, RAND Corporation issued a report proposing a partial framework for measuring safety in ADS-equipped vehicles.³⁵ In developing that framework, RAND considered how to define ADS safety, how to measure ADS safety, and how to communicate what is learned or understood about ADS. The RAND report purports to present a framework to discuss how safety can be measured in a technology- and company-neutral way.

Another effort is led by NVIDIA, which published a document proposing a framework called the Safety Force Field³⁶ that is articulated as a

²⁸ See Matthew Wood et al., *Safety First for Automated Driving* (2019), pp. 37–46, available at <https://www.apiv.com/docs/default-source/white-papers/safety-first-for-automated-driving-apiv-white-paper.pdf>. The above listing omits “ensure controllability for the vehicle operator” since a vehicle without traditional manual driving controls would not have a human operator.

²⁹ In an emergency or unusual situation, a vehicle should be able to respond/react to orders or requests from outside its own ADS perceive/plan/execute process. This could be law enforcement, pedestrians, other drivers, or passengers.

³⁰ Prior to transmitting any software update, care should be taken to evaluate the safety of the updates and the functions they enable or control not only in isolation, but also in combination with existing software and hardware and the functions they enable or control.

³¹ The Federal Trade Commission is the Federal agency that primarily oversees privacy policy and enforcement, including privacy-related cybersecurity matter. See <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy-security>.

³² <https://www.transportation.gov/av/4>.

³³ “A Novel Method to Evaluate the Safety of Highly Automated Vehicles” Joshua L. Every, Frank Barickman, John Martin Sughosh, Rao Scott Schnelle, Bowen Weng, Paper Number 17–0076; 25th International Technical Conference on the Enhanced Safety of Vehicles (ESV), available at <http://indexsmart.miramir.com/25esv/PDFfiles/25ESV000076.pdf>.

³⁴ “Model Predictive Instantaneous Safety Metric for Evaluation of Automated Driving Systems”. Bowen Weng, Sughosh J. Rao, Eshan Deosthale, Scott Schnelle, Frank Barickman, available at: <https://arxiv.org/pdf/2005.09999v1>.

³⁵ Laura Fraade-Blanar, Marjory S. Blumenthal, James M. Anderson, Nidhi Kalra, Measuring Automated Vehicle Safety—Forging a Framework, Rand, 2018, available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR2600/RR2662/RAND_RR2662.pdf.

³⁶ David Nistér, Hon-Leung Lee, Julia Ng, and Yizhou Wang, An Introduction to the Safety Force Field, Nvidia. Available at <https://www.nvidia.com/content/dam/en-zz/Solutions/self-driving-cars/safety-force-field/an-introduction-to-the-safety-force-field-updated.pdf>. See also David Nistér, Hon-

computational method to assess through simulation whether an ADS is monitoring its surrounding environment successfully and not taking unacceptable actions. The stated goal behind the Safety Force Field is avoiding crashes, and it seeks to accomplish this through setting a driving policy that analyzes the surrounding environment and predicts actions by other road users. Based upon this analysis, the system would then seek to determine potential actions that avoid creating or contributing to unsafe conditions that could lead to a crash.

In early July 2019, 11 companies, collectively referred to as “Safety First for Automated Driving,” released a paper describing safety by design, and verification and validation (V&V) methods for ADS.³⁷ This paper states that it aims to address L3 and higher levels of automation, and can serve as a useful starting point for examining V&V methods appropriate for ADS. To guide safety efforts, the paper identifies principles (12 in all) towards addressing safe operation; safety layer; ODD; behavior in traffic; user responsibility; vehicle-initiated handover; driver-initiated handover; effects of automation; safety assessment; data recording; security; and passive safety. These principles are expressed to be relevant to ADS, and most of them, except those relating to handover to a human operator, are indicated to be relevant to L4 and above.

Finally, several other companies and organizations have published or are developing either documents to guide the safe testing and deployment of ADS or technical approaches to programming ADS in order to reduce the likelihood of facing crash-imminent situations. For example, Intel’s Mobileye published a document proposing a framework called Responsibility Sensitive Safety³⁹ (RSS), intended to address issues with multi-agent safety (defined by them as safe

operation and interaction with multiple independent road users in a given environment). RSS is a mathematical model for multi-agent safety that incorporates common-sense rules of driving while interacting with other road users in a way that minimizes the chance of causing a crash, all while operating within normal behavioral expectations. The method is constructed with respect to “right-of-way” rules, occluded objects avoidance, and safe distance maintenance, both longitudinally and laterally. Mobileye also claims that special traffic conditions are covered in the discussion including intersection with traffic lights, unstructured roads, and collisions involving pedestrians (or other road users).⁴⁰

NHTSA is paying close attention to the efforts of other organizations to develop documents related to ADS safety that might be useful from a Federal regulatory perspective. While this document describes some of those efforts, it does not include all. NHTSA is also considering how it might harness process measures as part of a safety framework.

B. Process Measures—Safety Risk Minimization in the Design, Development, and Refinement of ADS

Vehicle process measures help an organization manage and minimize safety risk by identifying and mitigating sources of risk during the design, development, and refinement of new motor vehicles and motor vehicle equipment. Unlike engineering measures, process measures address safety issues that cannot be efficiently or thoroughly addressed through the FMVSS approach to testing, since process standards help to ensure reliability and robustness of designs over the life of the vehicle, and in “edge” cases—both of which are difficult or impossible to verify through one-time testing a finished vehicle. Careful adherence to process standards can enhance the safety of finished motor vehicles substantially.⁴¹ While some of

the standards described below are not specific to ADS, the principles underlying such standards can prove useful in ADS development.

1. Functional Safety

ISO 26262 describes a documentation of a process for the evaluation of functional safety⁴² to assist in the development of safety-related electrical and/or electronic (E/E) systems.⁴³ This framework is intended to be used by manufacturers to integrate functional safety concepts into a company-specific development framework. Some requirements have a clear technical focus to implement functional safety into a product; others address the development process itself and can therefore be seen as process requirements in order to demonstrate an organization’s capability with respect to functional safety.

ISO 26262 addresses identified, unreasonable safety risks arising from electrical and electronic failures. The framework is intended to be applied to safety-related systems that include one or more E/E systems that are installed in production road vehicles, excluding mopeds. ISO 26262 seeks to avoid failures associated with electronics systems—including those related to software programming, intermittent electronic hardware faults, and electromagnetic disturbances—and mitigate the impact of potential equipment faults during operation.⁴⁴ In addition to addressing fault conditions, it contains hazard analysis and risk assessment provisions, design, verification and validation (V&V) requirements, and safety management guidance.

ISO 26262 seeks to ensure systems have the capability to mitigate failure risk sufficiently for identified hazards. The needed amount of mitigation depends upon the severity of a potential loss event, operational exposure to hazards, and human driver controllability of the system when failure occurs. These factors combine into an Automotive Safety Integrity Level (ASIL) per a predetermined risk

Leung Lee, Julia Ng, and Yizhou Wang, Safety Force Field, Nvidia. Available at <https://www.nvidia.com/content/dam/en-zz/Solutions/self-driving-cars/safety-force-field/the-safety-force-field.pdf>.

³⁷ The 11 companies that comprise Safety First for Automated Driving are: Audi, BMW, Aptiv, Baidu, Continental, Daimler, Fiat Chrysler Automobiles, Here, Infineon, Intel and Volkswagen.

³⁸ “Safety First for Automated Driving,” available at <https://newsroom.intel.com/wp-content/uploads/sites/11/2019/07/Intel-Safety-First-for-Automated-Driving.pdf>.

³⁹ Shai Shalev-Shwartz, Shaked Shammah, and Amnon Shashua, On a Formal Model of Safe and Scalable Self-driving Cars, Mobileye, 2017. Summary available at <https://newsroom.intel.com/newsroom/wp-content/uploads/sites/11/2017/10/autonomous-vehicle-safety-strategy.pdf> and <https://newsroom.intel.com/editorials/paving-way-toward-safer-roads-all/#gs.8qhmve>. Full paper available at <https://arxiv.org/pdf/1708.06374.pdf>.

⁴⁰ Mobileye, Implementing the RSS Model on NHTSA Pre-Crash Scenarios, p. 3. Available at https://www.mobileye.com/responsibility-sensitive-safety/rss_on_nhtsa.pdf.

⁴¹ Transportation Research Board Special Report 308, *The Safety Promise and Challenge of Automotive Electronics: Insights from Unintended Acceleration*, 2012. The Board is part of the National Research Council, which is, in turn, part of the National Academies of Sciences, Engineering, and Medicine. At pages 87–88, this report describes the role that process measures could play in meeting the challenges presented by electronic systems and their “hardware components” and “software components.” The report is available on a number of online sites, including <http://onlinepubs.trb.org/onlinepubs/sr/sr308.pdf> and

<https://www.nap.edu/catalog/13342/trb-special-report-308-the-safety-challenge-and-promise-of-automotive-electronics> and <http://www.omg.org/hot-topics/documents/Safety-Promise-and-Challenge-of-Automotive-Electronics-TRB-2012.pdf>.

⁴² Functional safety is the absence of risk caused by a system malfunction typically involving an electronic control system.

⁴³ See <https://www.iso.org/standard/68383.html>.

⁴⁴ Van Eikema Hommes, Q.D. (2016, June). Assessment of safety standards for automotive electronic control systems. (Report No. DOT HS 812 285). Washington, DC: National Highway Traffic Safety Administration, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812285_electronicreliabilityreport.pdf.

table. The assigned ASIL for a function determines which technical and process mitigations should be applied, including specified design and analysis tasks that must be performed.⁴⁵

2. Safety of the Intended Functionality

The safety of ADS is also linked to other factors such as conceivable human misuse of the function, performance limitations of sensors or systems, and unanticipated changes in the vehicle's environment.⁴⁶

Safety of the Intended Functionality (SOTIF) attempts to prevent insufficiencies of the intended functionality or reasonably foreseeable misuse by persons. ISO 21448 is a safety standard for driver assistance functions that could fail to operate properly even if no equipment fault is present. SOTIF does not apply to faults covered by the ISO 26262 series or to hazards directly caused by the system technology (e.g., eye damage from a laser sensor). Rather, SOTIF works in tandem with ISO 26262 to help a manufacturer assess and mitigate a variety of risks during the development process, with ISO 26262 focusing on mitigating failure risk and ISO 21448 mitigating foreseeable system misuse.

ISO 21448 is intended to be applied to intended functionality where proper situational awareness is critical to safety, and where that situational awareness is derived from complex sensors and processing algorithms; especially emergency intervention systems (e.g., active safety braking systems) and Advanced Driver Assistance Systems (ADAS) with SAE driving automation Levels 1 and 2 on the SAE standard J3016 automation scales. Per SAE International, the standard can be considered for higher levels of automation, though additional measures might be necessary.⁴⁷

ISO 21448 primarily considers mitigating risks due to unexpected operating conditions (the intended function might not always work in such conditions due to limitations of sensors and algorithms) and gaps in requirements (lack of complete description about the actual intended function). Highlights of this standard include covering:

- Insufficient situational awareness;
- Foreseeable misuse and human-machine interaction issues;

- Issues arising from operational environment (weather, infrastructure, etc.);
- Identifying and filling requirement gaps (removing “unknowns”); and
- Enumerating operational scenarios.⁴⁸

3. UL 4600

UL has developed “UL 4600: Standard for Safety for the Evaluation of Autonomous Products,” a draft voluntary industry standard that states to take a safety case approach to ensuring the safety of ADS.⁴⁹ The published safety case approach includes three primary elements: Goals, argumentation, and evidence; each of which is stated to support the previous element to build an overarching safety case. The expressed goals are stated to be the same as ADS-related safety goals that an organization would be trying to achieve. The argumentation is claimed to describe the organization's analysis for why it thinks the system has met that goal. Finally, evidence is what the organization would consider to be sufficient to show that its arguments are reasonable and support the organization's assertion that it has met its safety goal.⁵⁰ Preliminary versions of the document were released in 2019, and UL released its most recent version of UL 4600 on April 1, 2020.⁵¹ Like ISO 26262 and 21448, UL 4600 is a process-focused standard that is intended for use by the manufacturers in developing ADS. However, unlike those ISO standards, UL 4600 was developed primarily for ADS.⁵²

With the descriptions of Functional Safety, SOTIF, and UL 4600 as background, NHTSA is considering how it might make use of these process standards in the context of developing a new framework concerning ADS, based either in regulation or providing guidance. Traditional FMVSS may not be suitable for addressing certain critical safety issues relating to aspects of the core safety functions of perception, planning, and control. NHTSA requests comment on the specific ways in which Functional Safety, SOTIF, and/or UL 4600 could be adopted, either modified or as-is, into a mechanism that NHTSA

could use to consider the minimum performance of an ADS or a minimum risk threshold an ADS must meet within the context of Vehicle Safety Act requirements.

IV. Safety Framework—Administrative Mechanisms for Implementation and Oversight

This section describes a variety of mechanisms that could be used, singularly or in combination, to implement the elements of a safety framework.⁵³ The possibility that multiple mechanisms might ultimately be used does not mean that they could or would need to be implemented in the same timeframe. While some mechanisms could be implemented in the near term, others would need to be developed through additional research and then validated before they could be implemented. Thus, the mechanisms could be adopted and implemented, if and when needed, in a prioritized and phased manner.⁵⁴ Implementation of some types of mechanisms might rarely be necessary, while others may be temporary until different mechanisms would take their place.

The array of available mechanisms roughly falls into either of two categories: (1) Voluntary mechanisms for monitoring, influencing and/or encouraging greater care; and (2) regulatory mechanisms. The former group includes voluntary disclosure, the New Car Assessment Program, and guidance. The latter group includes FMVSS and any other compulsory requirements.

A. Voluntary Mechanisms

NHTSA can establish various mechanisms to gather or generate information about:

- How developers are analyzing the safety of their ADS;
- how developers are identifying potential safety risks of those systems; and
- what methods developers are choosing to mitigate those risks.

This information could: (1) Enable the Agency to take proactive actions to encourage the development of innovative technologies in a manner that allows them to reach their full safety potential; (2) help the Agency

⁴⁸ Philip Koopman, et al, A Safety Standard Approach for Fully Autonomous Vehicles.

⁴⁹ See <https://edge-case-research.com/ul4600/>.

⁵⁰ Philip Koopman, An Overview of Draft UL 4600: “Standard for Safety for the Evaluation of Autonomous Products,” June 20, 2019, available at https://medium.com/@pr_97195/an-overview-of-draft-ul-4600-standard-for-safety-for-the-evaluation-of-autonomous-products-a50083762591.

⁵¹ See <https://www.shopulstandards.com/ProductDetail.aspx?productid=UL4600>.

⁵² See <https://www.eetimes.com/safe-autonomy-ul-4600-and-how-it-grew/#>.

⁵³ The Agency notes that while some of the mechanisms described in this document could be implemented through rulemaking pursuant to the Vehicle Safety Act, others are more suited to take the form of guidance.

⁵⁴ A phased approach is how the Agency is also modernizing the FMVSS for ADS-equipped vehicles without traditional manual controls, and may be the more expedient way to make progress while continuing necessary research and other work in the background.

⁴⁵ *Id.*

⁴⁶ Peters Els, Rethinking Autonomous Vehicle Functional Safety Standards: An Analysis of SOTIF and ISO 26262, March 25, 2019, available at <https://www.automotive-iq.com/autonomous-drive/articles/rethinking-autonomous-vehicle-functional-safety-standards-an-analysis-of-sotif-and-iso-26262>.

⁴⁷ See <https://www.iso.org/standard/70939.html>.

avoid taking action that hampers safety innovation or otherwise adversely affect safety; and (3) support the Agency's existing programs by helping the Agency become more responsive to new technologies. To the extent ADS developers make such information available to the Agency and the public, competing developers may be encouraged to place greater emphasis on safety and improve transparency on their efforts in that regard.

1. Safety Self-Assessment and Other Disclosure/Reporting

Demonstrating the safety of ADS is critical for facilitating public confidence and acceptance, which may lead to increased adoption of the technology. Entities involved in the development and deployment of automation technology have an important role in their responsibilities for safety assurance of ADS-equipped vehicles and in providing transparency about their systems are achieving safety.

ADS 2.0 provided guidance to stakeholders regarding the safe design, testing, and deployment of ADS. This document identified 12 safety elements that ADS developers should consider when developing and testing their technologies.⁵⁵ ADS 2.0 also introduced the concept of a Voluntary Safety Self-Assessment (VSSA), which is intended to encourage developers to demonstrate to the public that they are: Considering the safety aspects of an ADS; communicating and collaborating with the U.S. DOT; encouraging the self-establishment of industry safety norms; and building public trust, acceptance, and confidence through transparent testing and deployment of ADS.⁵⁶ Entities were encouraged to *demonstrate* how they address the safety elements contained in *A Vision for Safety* by publishing a VSSA on their websites. NHTSA believes that VSSAs are an important tool for companies to showcase their approach to safety without needing to reveal proprietary intellectual property. The Agency hopes that VSSAs show the public that how these companies are addressing safety and how safety considerations are built into the design and manufacture of ADS-equipped vehicles that are tested on public roadways. As of June 2020, 23 developers and automakers have published VSSAs, which represents a significant portion of the industry.

Another voluntary reporting mechanism aimed at transparency is NHTSA's AV TEST Initiative, which involves both a series of events

throughout the country where NHTSA, State and local governments, automakers, and ADS developers share information about activities. AV TEST is also expected to result in a website for companies to share information with the public about their vehicles, including details of on-road testing.

One type of administrative mechanism under consideration is to use guidance to encourage the development of a safety case by manufacturers. As used in this document, a safety case is "a structured argument, supported by a body of evidence that provides a compelling, comprehensible, and valid case that a system is safe for a given application in a given operating environment."⁵⁷ For NHTSA's purposes, "valid" as used in this context means "verifiable." Such an administrative mechanism might be implementable more quickly than other mechanisms and could allow vehicle and equipment manufacturers flexibility in documenting the competence of their ADS in performing sensing, perception, planning, and control of its intended functions. It may be possible, within the limits of administrative feasibility, to tailor some aspects of these demonstrations to a vehicle's design purpose and intended scope of operation. Another, more extensive, means of increasing transparency of how a company developed its ADS would be for the developer to disclose (e.g., to NHTSA and/or the public) some or all its safety case. This disclosure would provide the results of applying the company's own stated performance metrics, metric thresholds, and test procedures, and how those results justify its belief that its vehicle is functionally and operationally capable of performing each of the core elements of ADS safety performance.⁵⁸

⁵⁷ As used in this document, the term "safety case" has the same meaning as that term is used by Philip Koopman, Aaron Kane, and Jen Black in their paper, *Credible Autonomy Safety Argumentation*, 2019. The article is available at https://users.ece.cmu.edu/~koopman/pubs/Koopman19_SSS_CredibleSafetyArgumentation.pdf. See also Philip Koopman, "How to keep self-driving cars safe when no one is watching for dashboard warning lights," *The Hill*, June 30, 2018, available at <https://thehill.com/opinion/technology/394945-how-to-keep-self-driving-cars-safe-when-no-one-is-watching-for-dashboard>.

⁵⁸ See, e.g., Koopman, Philip, "How to keep self-driving cars safe when no one is watching for dashboard warning lights," *The Hill*, June 30, 2018. Available at <https://thehill.com/opinion/technology/394945-how-to-keep-self-driving-cars-safe-when-no-one-is-watching-for-dashboard>. See also Bryant Walker Smith, *Regulation and the Risk of Inaction in Autonomous Driving: Technical Legal and Social Aspects*, at 571–587, (Markus Maurer, J. Christian Gerdes, Barbara Lenz, and Hermann Winner, editors, 2016), available at <https://link.springer.com/content/pdf/10.1007%2F978-3-662-48847-8.pdf>.

2. New Car Assessment Program (NCAP)

Short of setting a safety standard, an ADS competency evaluation could be added in NCAP. While an FMVSS obstacle-course performance test, standing alone, would likely be inadequate to evaluate ADS competence, such a test might form a useful foundation for consumer information under the NCAP program. This evaluation could be developed and used to measure the relative performance of an ADS in navigating a variable environment (within established operational ranges) and complex set of interactions with stimulus road users (e.g., dummy vehicles, pedestrians, and cyclists) on a course, with note made of variances in the manner in which the course was completed. All ADS-equipped vehicles could be expected to avoid collisions (including avoiding *causing* collisions), while adhering to a driving model that minimizes the risks of getting into crash-imminent situations and observing operational limitations, such as limits on rates of acceleration and deceleration and limits on absolute speed. Additionally, operational data relating to crash avoidance performance, as well as "nominal" driving behaviors (e.g., lane-keeping ability), could be collected during "on-road driving" and could be used to contribute to an overall safety performance assessment method. Relatedly, an NCAP program could provide comparative data on the occupant protection afforded by ADS vehicles.

The information NCAP provides empowers consumers to compare the relative safety of new vehicles and to make informed vehicle-purchasing decisions. This information has encouraged automakers to compete based upon improving safety—encouraging safety advancements and swift adoption of performance improvements that improve the safety of motor vehicles. For example, with the inclusion of static and dynamic rollover prevention tests into the NCAP program in 2001 and 2003, NHTSA encouraged the advancement and further deployment of safety improving technologies—notably electronic stability control—to prevent rollover crashes. This deployment took place more than 10 years before a FMVSS for electronic stability control went into effect.⁵⁹ In part because of the market demand triggered by that encouragement, 29 percent of MY 2006 vehicles already had ESC voluntarily

⁵⁹ While the NPRM for the creation of FMVSS No. 126 was issued in 2006, the new standard did not apply until MY 2012.

⁵⁵ *Id.*, pp. 5–15.

⁵⁶ *Id.*, p. 16.

installed. NCAP's power to provide safety-relevant information to consumers, thus driving consumer demand for safety improvements in the market, could similarly be harnessed and applied to ADS performance.

3. Operational Guidance

At the current stage in the development of the technologies needed for wide-scale deployment of ADS, the specific areas for which regulatory intervention might be most needed remain uncertain and the appropriate regulatory performance metrics and safety thresholds remain unknown. The Department has therefore sought to enhance safety through voluntary guidance, instead of mandatory requirements. The Agency is requesting comment on whether developing further guidance on engineering and process measures remains the most appropriate approach.⁶⁰

To ensure due process and appropriate consideration of views of stakeholders and the general public in the development of guidance, certain guidance documents are subject to public comment—in accordance with Department of Transportation Regulations on Guidance Documents⁶¹ and Executive Order 13891.⁶² That said, guidance documents, as they simply recommend rather than require actions by regulated entities, are more appropriate at this early stage in the development of ADS and ADS-equipped vehicles, reserving mandatory requirements for when the technology is sufficiently mature and actual safety needs have been more clearly identified. Guidance documents also provide the agency greater flexibility in making recommendations, as they do not need to meet the strict requirements that FMVSS must meet and are generally easier to adopt and modify than mandatory requirements issued in a FMVSS. The Agency, therefore, would likely be able to develop and update these guidance documents more quickly, and design them to be more reflective of consensus industry

standards and practices as they continue to develop.

Issuing guidance, working with States and developers to deepen communications, identifying for manufacturers critical safety aspects generally applicable to ADS, and exercising safety oversight using NHTSA's existing broad enforcement authorities⁶³ have, for the most part, been NHTSA's approaches to the development of ADS thus far. NHTSA expects that these will continue to be the Agency's approaches to ADS for the foreseeable future while it conducts the research necessary to develop meaningful performance tests and metrics and while it closely monitors changes occurring in the private development of ADS and business models that surround the technology.

B. Regulatory Mechanisms

That said, the Agency believes that, at some point, regulation of the ADS will likely be necessary and is exploring ways it could appropriately regulate ADS, being mindful of the need to avoid creating unnecessary barriers to innovation or unintended safety risks. As discussed above, many stakeholders are already exploring a variety of approaches to assessing ADS performance and measuring ADS safety. The following explores what regulatory mechanisms the Agency is currently using and how future approaches might be incorporated into the FMVSS, either separately or together and in conjunction with non-regulatory mechanisms.

1. Mandatory Reporting and/or Disclosure

In addition to the voluntary reporting/disclosure activities discussed in the previous section, NHTSA has also taken steps to require the disclosure and reporting of certain information in the context of exemptions. NHTSA recently conditioned the Agency's grant of a petition for temporary exemption on a set of terms that include mandatory reporting of information on the operation of the vehicles equipped with ADS.⁶⁴ The petition for exemption was

from Nuro, Inc. for a low-speed (25 mph maximum), electric-powered occupantless delivery vehicle that will be operated by an ADS.⁶⁵ In NHTSA's notice granting the petition for exemption, the Agency stated: "NHTSA has determined that it is in the public interest to establish a number of reporting and other terms of deployment of the vehicles that will apply throughout the useful life of these vehicles—violation of which can result in the termination of this exemption."⁶⁶ The terms include post-crash reporting, periodic reporting, cybersecurity, and other general requirements.⁶⁷

NHTSA also maintains a process for the temporary importation of noncompliant vehicles into the United States for research, demonstration, testing, and other purposes.⁶⁸ For entities other than manufacturers of certified motor vehicles, approval of a temporary exemption comes in the form of written permission from NHTSA that the importer may import the noncompliant vehicle.⁶⁹ When NHTSA began receiving requests for exemptions to import ADS-equipped vehicles for research and demonstration purposes, NHTSA determined that additional requirements were necessary to exercise oversight and monitor the safety of the exempt vehicles' operations. NHTSA may condition approval for importation of a noncompliant vehicle on specific terms and conditions.⁷⁰ Similar to the terms that accompany a grant of a petition for exemption, the terms that importers are required to meet depend upon the information included in the petition, and are generally established to mitigate risks. Many of the terms required of Nuro have also been required for importers who have received permission to import a non-compliant ADS-equipped vehicle. Some examples of additional terms and conditions added to permission letters for vehicles equipped with ADS include: requiring that the noncompliant vehicle be used only in the ways described in the application; annual reporting on the status of all vehicles granted temporary exemptions; disengagement reporting; and reporting incidents of near misses, situations in which the trained operator acted to avoid an imminent crash, deviations

⁶⁰ This approach has been recognized by WP 29. See <https://www.unecce.org/fileadmin/DAM/trans/doc/2019/wp29/ECE-TRANS-WP29-2019-34-rev.1e.pdf>. With respect to engineering measures, the development of guidance is often based upon much of the same work that would lead to the development of industry standards, *i.e.*, the development and validation of performance metrics, performance thresholds, and test procedures.

⁶¹ 49 CFR 5.25, *et seq.*

⁶² Executive Order 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents" Oct. 9, 2019.

⁶³ NHTSA has broad investigatory and enforcement authority relating to motor vehicle safety. While NHTSA can order a recall for FMVSS non-compliance, it can also order a recall when it learns of a defect in the design, construction, or performance of a vehicle or item of equipment that poses an unreasonable risk to motor vehicle safety that increases the likelihood of a crash occurring or increases the likelihood of injury or death should a crash occur. In fact, the vast majority of recalls are issued for safety related defects that having nothing to do with FMVSS.

⁶⁴ 85 FR 7826 (Feb. 11, 2020), available at <https://www.federalregister.gov/documents/2020/02/11/>

2020-02668/nuro-inc-grant-of-temporary-exemption-for-a-low-speed-vehicle-with-an-automated-driving-system.

⁶⁵ *Id.*

⁶⁶ *Id.*, p. 7827.

⁶⁷ *Id.*, p. 7840.

⁶⁸ 49 U.S.C. 30114; 49 CFR part 591.

⁶⁹ 49 U.S.C. 30114; 49 CFR part 591.

⁷⁰ 49 CFR 591.6(f)(2).

from the prescribed route, and unexpected lane departures.

2. NHTSA's FMVSS Setting Authority

NHTSA has broad jurisdiction over motor vehicle safety pursuant to the Safety Act (49 U.S.C. Chapter 301), the purpose of which is "to reduce traffic accidents and deaths and injuries resulting from traffic accidents." The Safety Act defines "motor vehicle safety" as inclusive of both operational and nonoperational safety. Specifically, "motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle."⁷¹

The Safety Act authorizes the issuance of FMVSS for motor vehicles and motor vehicle equipment and the recall and remedy of motor vehicles and equipment failing to comply with a FMVSS or containing a defect that poses an unreasonable risk to safety. The FMVSS are intended to be uniform national standards so that compliant vehicles can be sold throughout the United States.⁷²

Among the products that fall within the scope of this authority are all vehicle systems and their parts and components. Modern computer-controlled electronic systems, like object detection and identification systems needed to protect vulnerable road users, automatic emergency braking systems, and air bag systems, are composed of hardware and software components, both of which are necessary to the functioning of those systems. Without their software components, computer-controlled electronic systems are merely non-functional assemblages of hardware components, incapable of protecting anyone. NHTSA has used its authority to specify how and when the hardware components of complex electronic systems, such as advanced air bags and anti-lock braking systems, must activate and perform. This performance-oriented approach gives manufacturers freedom to develop the software components needed to control the performance of each system's hardware components. NHTSA has also repeatedly exercised its authority over software when the software components of the

computerized electronic systems of motor vehicles have been determined to contain a safety defect and thus become the subject of a recall campaign.⁷³

The Safety Act defines "motor vehicle safety standard" as "a *minimum* standard for motor vehicle or motor vehicle equipment *performance*."⁷⁴ This definition contemplates that each FMVSS (1) regulates one or more identified aspects of vehicle or equipment performance, and (2) specifies a minimum threshold for each of those aspects of performance (*i.e.*, a required level of that aspect of performance that regulated products must at least equal to protect against unreasonable risk of crashes or unreasonable risk of death or injury in a crash). Such a threshold serves as a clear separation of compliant from noncompliant products. In the event of noncompliance, the threshold also aids NHTSA in determining the nature and extent of the needed remedy and in determining the seriousness of the noncompliance, which, in turn, is relevant in determining the appropriate amount of any civil penalty. Specifying minimum levels of safety performance in a standard also enables the Agency to estimate the benefits and the costs of complying with a standard and determine what level of stringency maximizes net benefits, as contemplated by Executive Order 12866⁷⁵ and Department of Transportation regulations.⁷⁶

⁷³ See Addendum B for a list of examples of software-related recalls.

⁷⁴ 49 U.S.C. 30102(a)(9) (emphasis added).

⁷⁵ Available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

⁷⁶ 49 CFR 5.5. This regulation requires the following when developing or issuing regulations, including regulations to establish FMVSS:

(a) There should be no more regulations than necessary. In considering whether to propose a new regulation, policy makers should consider whether the specific problem to be addressed requires agency action, whether existing rules (including standards incorporated by reference) have created or contributed to the problem and should be revised or eliminated, and whether any other reasonable alternatives exist that obviate the need for a new regulation.

(b) All regulations must be supported by statutory authority and consistent with the Constitution.

(c) Where they rest on scientific, technical, economic, or other specialized factual information, regulations should be supported by the best available evidence and data.

(d) Regulations should be written in plain English, should be straightforward, and should be clear.

(e) Regulations should be technologically neutral, and, to the extent feasible, they should specify performance objectives, rather than prescribing specific conduct that regulated entities must adopt.

(f) Regulations should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety. Where they impose burdens, regulations should be narrowly tailored to address

In addition, each FMVSS must be objective and practicable.⁷⁷ The Sixth Circuit has held that the FMVSS objectivity requirement means that compliance with an FMVSS standard must be susceptible to objective measurements, which are capable of repetition.⁷⁸ Each FMVSS must also be reasonable, practicable, and appropriate for each type of vehicle to which it applies.⁷⁹ In the interest of transparency, and as a matter of due process, each FMVSS must also give reasonable notice of what performance is required and how compliance will be determined.⁸⁰

NHTSA has broad authority to issue FMVSS. "[T]he Agency is empowered to issue safety standards which require improvements in existing technology or which require the development of new technology, and it is not limited to issuing standards based solely on devices already fully developed."⁸¹ However, NHTSA has learned from previous experiences that establishing FMVSS prior to technology readiness can lead to adverse safety consequences. Motor vehicles are extraordinarily complicated machines that are massive and move at very high speeds. When setting a performance standard not appropriately grounded in the capabilities of technologies employed to meet the standard, unexpected consequences can result. For instance, one of the foundational court decisions regarding FMVSS involved the Agency's

identified market failures or specific statutory mandates.

(g) Unless required by law or compelling safety need, regulations should not be issued unless their benefits are expected to exceed their costs. For each new significant regulation issued, agencies must identify at least two existing regulatory burdens to be revoked.

(h) Once issued, regulations and other agency actions should be reviewed periodically and revised to ensure that they continue to meet the needs they were designed to address and remain cost-effective and cost-justified.

(i) Full public participation should be encouraged in rulemaking actions, primarily through written comment and engagement in public meetings. Public participation in the rulemaking process should be conducted and documented, as appropriate, to ensure that the public is given adequate knowledge of substantive information relied upon in the rulemaking process.

(j) The process for issuing a rule should be sensitive to the economic impact of the rule; thus, the promulgation of rules that are expected to impose greater economic costs should be accompanied by additional procedural protections and avenues for public participation.

⁷⁷ 49 U.S.C. 30111(a).

⁷⁸ See *Chrysler Corp. v. Dep't of Transp.*, 472 F.2d 659, 675–76 (6th Cir. 1972) (citing House Report 1776, 89th Cong. 2d Sess. 1966, p. 16).

⁷⁹ 49 U.S.C. 30111(b)(3).

⁸⁰ See *United States v. Chrysler Corp.* 158 F.3d 1350, 1354 (D.C. Cir. 1972).

⁸¹ *Chrysler Corp. v. Dep't of Transp.*, 472 F.2d 659, 673 (6th Cir. 1972).

⁷¹ 49 U.S.C. 30102(a)(9).

⁷² *Truck Safety Equipment Institute vs. Kane*, 466 F. Supp. 1242, 1250 (M.D.Pa.1979).

establishment of braking standards for air brake-equipped trucks, tractor-trailers, and buses—mandating stopping distances far shorter than achieved in large trucks that were built at the time.⁸² The stopping distance requirements required the entire industry to design completely new braking systems. The Agency was aware that the shorter stopping distances would increase the likelihood of wheel lock-up, so the standard also required that the stops be made without wheel lock-up—which effectively (although not explicitly) required manufacturers to develop and install antilock computers on each axle. These antilock devices proved unreliable,⁸³ and, combined with the more-powerful newly designed braking systems, resulted in increased risk of loss of control resulting from wheel lock-up. Further, the susceptibility of early sensors to outside interferences resulted in circumstances where some trucks lost the use of brakes entirely. In invalidating requirements under the standard, the Court of Appeals for the Ninth Circuit found that “because of unforeseen problems in the development of the new braking systems, the Standard was neither reasonable nor practicable at the time it was put into effect.”⁸⁴ The Court also explained that NHTSA must “ascertain, with all reasonable probability, that its safety regulations do not produce a more dangerous highway environment than that which existed prior to governmental intervention.”⁸⁵

Given the rapidly evolving state of ADS technology, NHTSA is taking care that its actions do not result in unforeseen problems in the development or deployment of ADS. Establishing FMVSS prior to technology readiness hampers safety-improving innovation by diverting developmental resources toward meeting a specific standard. Such a regulatory approach could unnecessarily result in the Agency establishing metrics and standards without a complete understanding of the technology or safety implications and result in unintended consequences, including loss of potential benefits that could have been attained absent government intervention, a false sense of security, or even inadvertently creating additional risk by mandating an approach whose effects had not been known because

regulation halted the technology at too early a stage in its development.

NHTSA has typically used its FMVSS authority either to mandate the installation of a proven technology by way of performance standards to address a safety need and subject the technology to minimum performance requirements, or to regulate voluntarily installed technology by subjecting the technology to minimum performance safety requirements. In most instances, when NHTSA has mandated the installation of a technology by way of performance standards, it has not done so until the technology is fully developed and mature, so that all buyers of new vehicles have the protection of that technology. An example of this practice is Electronic Stability Control (ESC). ESC development for passenger cars began in the late 1980s, and three manufacturers voluntarily installed the systems on some of their vehicles by 1995.⁸⁶ After NHTSA evaluated real world data and realized the beneficial effect of ESC in preventing crashes, NHTSA undertook a rulemaking to establish FMVSS No. 126, “Electronic stability control systems for light vehicles.” By the time a proposal was issued for FMVSS No. 126, 29 percent of MY 2006 vehicles sold in the U.S. were already voluntarily equipped with ESC.⁸⁷ Given the profound benefits of ESC, NHTSA’s rulemaking impelled the expedited installation of ESC in the vehicle fleet. While this has been a common practice, of establishing performance standards and mandating that certain vehicles be equipped with a system that meets those performance requirements, it is too soon to tell if this will be the best path forward for ADS.

Furthermore, there are notable instances in which NHTSA has regulated voluntarily installed technologies by simply establishing minimum safety performance requirements, as opposed to mandating the installation of a technology, include when the Agency anticipated the introduction of electric and compressed natural gas vehicles and fuel systems, and issued standards to guard against risks of electric shock and explosion.

Also, existing classes of vehicles (e.g., passenger cars, trucks, buses, motorcycles, and low speed vehicles) subject to the existing FMVSS are based largely on observable physical features (e.g., number of designated seating positions) or objectively measurable specifications (e.g., gross vehicle weight rating) or performance (e.g., top

speed).⁸⁸ As a result, determining which class a vehicle falls into involves a relatively simple, quick, and objective process.

Developers of ADS are taking a variety of approaches to the vehicles that utilize their systems. Some are testing their systems in fully FMVSS-compliant vehicles, others are exploring alternative vehicle designs that would not comply with some or even all of the current FMVSS, and even others are simply developing the ADS without a particular vehicle type in mind—something that could be retrofit into an existing vehicle, or a system that could be sold to automakers. NHTSA expects that existing vehicle classes will remain relevant for many purposes. Yet, new classes of vehicles may emerge as companies begin to consider all the possible uses and business models available for their systems. The need to define any new class in the context of the FMVSS has not been determined.

3. Applying the Established FMVSS Framework to ADS Safety Principles

NHTSA believes that the critical relationship between the safety of an ADS’s design and the vehicle’s decision-making system makes it necessary to evaluate the safety of ADS performance considering appropriate and well-defined ODD (for any system below Level 5). For example, if an ADS is capable of only operating at speeds below 30 miles per hour (mph), it is reasonable and necessary to assess the system at speeds below 30 mph. NHTSA might also consider whether it would be appropriate to require that the vehicle be designed so that it cannot operate automatically at speeds of 30 mph or more unless and until it acquires the capability (e.g., through software updates) of safely operating automatically above that speed. Similarly, if a vehicle would become incapable of operating safely if one or more of its sensors became non-functional, NHTSA might consider whether it would be appropriate to require that the vehicle be designed so that it can detect those problems and either cease to operate automatically in a safe manner in those circumstances (in the case of a vehicle designed to operate either manually or automatically) or operate automatically in a reduced or “limp home” manner only.

State and local authorities also play critical roles in roadway safety. Through establishing and enforcing their rules of the road, these authorities have traditionally controlled such operational matters as the speed at which vehicles may be driven and the condition of certain types of safety equipment, such

⁸² *Paccar, Inc. v. Nat’l Highway Traffic Safety Admin.*, 573 F.2d 632 (9th Cir. 1978)

⁸³ Failure rates well over 50% were reported. *Id.* at 642

⁸⁴ *Id.* at 640.

⁸⁵ *Id.* at 643.

⁸⁶ <http://knowhow.napaonline.com/electronic-stability-control-a-short-history/>.

⁸⁷ *Id.*

as headlamps and taillamps. In the future, it is reasonable to expect that such authorities may establish new rules of the road to address ADS-equipped vehicles specifically. NHTSA could require that ADS be designed such that they must follow all applicable traffic laws in the areas of operation, thereby supporting State and local efforts to ensure their traffic laws are observed. That said, NHTSA expects that the States and localities would enforce those rules if broken, just as they would today.

4. Reforming How NHTSA Drafts New FMVSS To Keep Pace With Rapidly Evolving Technology

As the functions and capabilities of modern motor vehicles are increasingly defined and controlled by software, vehicles will likely continue to change and improve through software updates that occur during the lifetime of the vehicle. Likewise, the more quickly vehicle systems can change, the greater the risk that the current regulatory requirements may unnecessarily interfere with innovation, and that the slow pace of the regulatory process to address unnecessary barriers may delay the introduction of new safety improvements.

The nature and requirements of the rulemaking process may challenge the Agency's efforts to amend existing FMVSS and develop, validate, and establish new FMVSS quickly enough to enable the Agency to keep pace with the expected rapid rate of technological change. Some aspects of the process are inherent and, thus, unavoidable, such as the often lengthy period needed for preparatory research to develop and validate performance metrics and test procedures and for the rulemaking process to propose, take and consider comment, and eventually adopt the metrics and procedures.

There are, however, other aspects of the process that are not only amenable to reform, but that are also likely needed to change for expedient application to future technologies. Some portions of the existing FMVSS might be seen as overly specific, and insufficiently technologically neutral. If a new generation of safety standards and other safety regulations is determined to be needed for ADS, they might be written, to the extent allowed by the law, so that they do not have the effect of inadvertently locking future ADS into today's hardware and software technologies. A new generation of performance requirements and test procedures for ADS could be drafted with a greater eye to enabling continuing technological innovation to

ensure that the new requirements do not become unintended obstacles to the use of new technologies. In other words, the Agency should take care not to assume that the specific technologies used in today's vehicles will be used in future vehicle designs. Future standards—particularly those that mandate vehicles be equipped with a certain technology—may be better approached by focusing on objective vehicular functionality as opposed to the performance of a specific discrete system. A new generation of FMVSS should give the manufacturers of vehicles, sensors, software, and other technologies needed for ADS sufficient flexibility to change and improve without the need for frequent modifications to the regulations. Such an approach may also benefit the safety of future vehicles through more flexible standards that focus more on the safety outcome, rather the performance of any specific technology.⁸⁹

What may be needed, then, is a new approach to structuring and drafting standards that places greater reliance on more general, but still objective, specifications of the types and required levels of performance.⁹⁰

5. Examples of Regulatory Approaches

Below NHTSA provides some examples of potential regulatory approaches that the Agency could consider including in a safety framework. These examples are not intended to propose any particular approach. Instead, they highlight some of the future approaches on which NHTSA would like feedback.

a. FMVSS Requiring Obstacle Course-Based Validation in Variable Scenarios and Conditions

A performance-oriented, outcome-based FMVSS could be developed along one or more of the lines stated in “AV 3.0”:

Performance-based safety standards could require manufacturers to use test methods, such as sophisticated obstacle-course-based test regimes, sufficient to validate that their ADS-equipped vehicles can reliably handle the normal range of everyday driving scenarios as well as unusual and unpredictable scenarios. Standards could be designed to account for factors such as variations in weather, traffic, and roadway

conditions within a given system's ODD, as well as sudden and unpredictable actions by other road users. Test procedures could also be developed to ensure that an ADS does not operate outside of the ODD established by the manufacturer. Standards could provide for a range of potential behaviors—e.g., speed, distance, angles, and size—for surrogate vehicles, pedestrians, and other obstacles that ADS-equipped vehicles would need to detect and avoid.^{91 92}

However, physical testing of ADS functions through an obstacle course with a wide range of potential scenarios and conditions would not be without its own limitations. While physical obstacle course testing may be appropriate and even necessary as part of a future FMVSS regulating ADS competency, such a test is likely not sufficient to meet the need for safety in and of itself. Testing an ADS is expected to be different from the physical testing considered sufficient for today's vehicles. No physical obstacle course would come close to replicating the infinite number of driving scenarios an ADS would be expected to navigate safely, nor the complexity of the driving situations that ADS might encounter on the roads.

The level of ADS competency required to handle such diversity and complexity is partly why ADSs are developed using a variety of verification and validation tools when exposing the ADS to different scenarios during development. ADS developers generally use an iterative process that includes simulations, closed-course testing, and on-road testing during development and demonstration to expose the ADS to as many variables as reasonably possible, while also transferring information from each of those methods of testing back to the others to help ensure each method includes as many variables as possible. Situations that occur during on-road testing are important information for developers to include in the simulations used on ADS, and vice versa, with scenarios from the simulations being important to validate in the physical world through on-road testing. Though this iterative testing is normal for the development process, it may also indicate how challenging it might be for an obstacle-course test administered by a third party to include an adequate number and type of scenarios to test ADS competency, while also ensuring

⁸⁹ NHTSA has always sought to draft the FMVSS requirements broadly enough to permit use of both current technologies and possible future systems, but the rapid pace of development of ADS and other advanced technologies makes this objective more critical than ever.

⁹⁰ This effort to initiate reform in the vehicle safety program is at least comparable in scope to the effort launched by the Agency in 2003 when it issued an ANPRM to reform the Automobile Fuel Economy Standards Program, 68 FR 74908 (Dec. 29, 2003).

⁹¹ Page 7. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/automated-vehicles/320711/preparing-future-transportation-automated-vehicle-30.pdf>.

⁹² For an example of requirements that might be expressed as mathematical functions, see the discussion of Mobiley's RSS in section IV.C of this document.

that such a course would be objective and practicable. While a standard obstacle course test may provide a baseline of performance, analogous to current FMVSS that perform a subset of specific crash tests, it cannot expose a vehicle to the entire spectrum of field crash scenarios.

b. FMVSS Requiring Vehicles To Be Programmed To Drive Defensively in a Risk-Minimizing Manner in Any Scenario Within Their ODD

An FMVSS might also require that the planning and control functions of an ADS be programmed to adhere to a defensive driving model so as to minimize the likelihood of getting into a crash-imminent situation under any scenario within its ODD—similar to the driving policies and metrics described in Mobileye's RSS, NVIDIA's Safety Force Field, and NHTSA's MPriSM described previously. This could be accompanied by an additional requirement that the vehicle be capable of automated operation within its ODD only. The FMVSS could be complemented by a requirement that each vehicle manufacturer state in the owner's manual for each of its vehicles equipped with ADS that it would be unsafe for the vehicle to operate in automated mode outside its ODD and that the vehicle has therefore been designed so that it cannot do so. Such a statement could also include a description of what behavior the vehicle owner could expect in the circumstance that an ADS exceeds the limits of its ODD, such as the vehicle will pull over in a safe location.⁹³

While programming an ADS to adhere to defensive driving models may help lower the risk of crash, there are additional ADS performance aspects that NHTSA would need to consider. Adherence to a defensive driving model would be one potential requirement that could mitigate some, but not all, safety risks. Much would also depend on the implementation of that defensive driving model, and the efficacy of that implementation.

c. FMVSS Drafted in a Highly Performance-Oriented Manner

The traditional approach to standard drafting is one where NHTSA specifies the desired performance in great detail, and may also include requirements to lessen the likelihood and mitigate the consequences of failure. For instance, FMVSS No. 135 "Light vehicle brake

systems," establishes performance requirements for braking systems functioning normally, and separate requirements for when brake power assist units are inoperative or depleted of reserve capability. Applying this approach to the myriad unique combinations of technologies that may be developed to perform the four critical functions of an ADS could prove quite challenging. For instance, the sensing function of an ADS may be performed by one or a combination of technologies such as LiDAR, radar, cameras, GPS, and V2X radios/antennae units. If the available technologies that might be used for sensing fail in distinctly different ways, the approach the Agency took in regulating light duty braking might mean that any sensing standard must include different requirements for different technologies.⁹⁴ The degree of specificity required for such an approach would necessitate successive rulemaking proceedings to amend or remove regulatory provisions as they are obsolete by technological change.

To avoid this problem, any FMVSS that might be developed for ADS could be drafted in a manner that minimizes the chances of creating new barriers to innovation. As the Department stated in "AV 3.0":

Future motor vehicle safety standards will need to be more flexible and responsive, technology-neutral, and performance-oriented to accommodate rapid technological innovation. They may incorporate simpler and more general requirements designed to validate that an ADS can safely navigate the real-world roadway environment, including unpredictable hazards, obstacles, and interactions with other vehicles and pedestrians who may not always adhere to the traffic laws or follow expected patterns of behavior. Existing standards assume that a vehicle may be driven anywhere, but future standards will need to take into account that the operational design domain (ODD) for a particular ADS within a vehicle is likely to be limited in some ways that may be unique to that system.⁹⁵

The likelihood of different ADS having entirely different sensors, systems, and even ODDs that are limited in entirely different ways introduces additional challenges to NHTSA's traditional approach to standard

drafting. Generally, NHTSA establishes standards meeting the need for safety in applicable circumstances. When one ADS can operate only in a discrete set of conditions that varies almost entirely from the discrete set of conditions in which another ADS is capable of operating, establishing objective standards meeting the need for motor vehicle safety for all ADS becomes that much more challenging. Application of one specific or one series of prescriptive tests may not be feasible or practical for that wide an array of technology and operating limitations. Compounding this difficulty is the fact that a given ADS is likely to be updated over time—and ODD limitations that apply to a vehicle's ADS at the time of certification could be entirely different from the same vehicle's upgraded ODD limitations years later.

D. Timing and Phasing of FMVSS Development and Implementation

As described above, issuing performance standards for ADS competency has been and remains premature because of the lack of technological maturity and the development work necessary to support developing performance standards. Since widespread deployment of ADS vehicles appears to be years away, NHTSA has the opportunity to decide carefully and strategically which aspects of ADS safety performance may require the most attention. By taking this deliberate approach, the Agency can perform the research and validation necessary to ensure that any standards developed to regulate those aspects of performance achieve their purpose without limiting the ability of manufacturers to develop and introduce further safety improvements and capabilities unnecessarily.

Also important to this discussion of timing are the many challenges and aspects that NHTSA must overcome to implement some of the mechanisms described in this document. First, it has been NHTSA's practice to purchase vehicles independently to assess baseline and/or countermeasure performance when developing an FMVSS. Given the lack of ADS-equipped vehicles available for testing or any other purposes, the Agency would have difficulty verifying that a new standard would achieve its intended purpose without systems and vehicles to test.⁹⁶ In recognition of and

⁹³ Importantly, even without standards in place to regulate these aspects, NHTSA may consider the ability of an ODD-constrained vehicle to operate outside of its ODD as strong evidence of a safety-related defect.

⁹⁴ It should be noted that if an FMVSS were to include such requirements, the amount of time needed to develop and adopt the standard would likely be greater. Likewise, the need for periodic rulemakings to keep the standard up-to-date and avoid potentially adverse effects on the ability to introduce new hardware and software would also likely be greater.

⁹⁵ Page 7. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/automated-vehicles/320711/preparing-future-transportation-automated-vehicle-30.pdf>.

⁹⁶ NHTSA notes that the issue of unavailability for NHTSA testing could arise in other circumstances with traditional vehicles that may not be sold to the public. NHTSA independently and anonymously purchases vehicles for testing

in response to the difficulty, the Agency would be required to explore alternative avenues to validate the appropriateness of a proposed test procedure.

Next, NHTSA expects a phased approach to regulation of those aspects of safety performance that may necessitate regulation, given limited agency resources and the constantly evolving technology and business models involved in ADS development. NHTSA would need to phase its responses in several ways. To avoid implementing ineffective or counterproductive measures, the Agency would need to set priorities and allocate its resources accordingly. NHTSA has already begun the process of providing oversight and guidance (including encouraging disclosure and highlighting key safety aspects the Agency finds relevant for all ADS developers), as described in previous sections. Further, where appropriate, the Agency has granted, and will continue to consider granting, exemptions from FMVSS to allow for limited deployment or research of in a manner that mitigates safety risk and advances agency technical knowledge. However, the question remains as to what the Agency should prioritize next in its goals of advancing the safety of ADS. Certain mechanisms would permit more expedited implementation, while others would require much research. Most of the mechanisms would face some of the practical hurdles related to the unavailability of ADS to test.

NHTSA seeks comment on what next steps the Agency should take in the regulation of ADS, the timing of those steps, and whether any of the abovementioned steps are required for the development of an ADS-specific FMVSS regime that achieves appropriate standards for highway safety while preserving incentives for innovation and accommodating improvements in technology.

E. Critical Factors Considered in Designing, Assessing, and Selecting Administrative Mechanisms

To aid commenters in providing useful information to the Agency on the array of administrative mechanisms described above, NHTSA has set forth below a variety of critical factors that the Agency will weigh in exploring the strengths and weaknesses of those mechanisms.

- **Consistent and Reliable Assurance of Safety**—To the extent that the mechanisms provide flexibility in how manufacturers demonstrate safety, there

should be criteria for assessing objectively whether the methods of each manufacturer should meet a common standardized level of rigor, including documentation, and a common standardized minimum level of safety.

- **Technology Neutrality/Performance-Based**—The Agency wants to ensure that any mechanism it uses does not pick winners and losers among available and anticipated technologies. By being highly performance or outcome oriented, the mechanisms will allow for innovation and minimize the necessity of having to be amended to permit the introduction of new technologies. Any new standards and regulations should be drafted, to the extent possible, in performance-oriented terms to give manufacturers broad choices among available technologies and flexibility to develop and introduce new technologies without the need first to seek amendments to those standards or exemptions.

- **Predictability**—In developing vehicles and ADS, manufacturers should be able to anticipate what types of performance outcomes they will need to make to demonstrate the safety of their products so that they can design their products accordingly.

- **Transparency**—To build public confidence and acceptance, the methods used by manufacturers to demonstrate the safety of their products should be made known and explained to the public.

- **Efficiency**—Given that there is neither enough time nor resources for the Agency to develop physical test procedures for all conceivable driving scenarios, an effort should be made to determine which physical tests have the greatest likelihood to minimize safety risk in an effective manner.

- **Equity**—All manufacturers should be treated fairly and equally in the Agency's assessing of the sufficiency of their safety showings. To that end, the mechanism(s) chosen by the Agency should provide some means to validate that each manufacturer's demonstration of safety meets or exceeds a common level of rigor and comprehensiveness and that each vehicle meets or exceeds a common minimum level of safety.

- **Consistent with Market-Based Innovation**—To ensure that innovation is recognized and valued, governmental actions should be consistent with market-based innovation, and ensure the Agency's actions facilitate and do not unnecessarily inhibit innovation to the extent possible.

- **Resource Requirements**—Return (measured in added safety) on investment (e.g., efficient use of available resources) is especially

important in choosing mechanisms and in deciding which of the core elements of ADS safety performance the Agency should prioritize in exercising its safety oversight responsibilities.

V. Questions and Requests

A. Questions About a Safety Framework

- **Question 1.** Describe your conception of a Federal safety framework for ADS that encompasses the process and engineering measures described in this document and explain your rationale for its design.

- **Question 2.** In consideration of optimum use of NHTSA's resources, on which aspects of a manufacturer's comprehensive demonstration of the safety of its ADS should the Agency place a priority and focus its monitoring and safety oversight efforts and why?

- **Question 3.** How would your conception of such a framework ensure that manufacturers assess and assure each core element of safety effectively?

- **Question 4.** How would your framework assist NHTSA in engaging with ADS development in a manner that helps address safety, but without unnecessarily hampering innovation?

- **Question 5.** How could the Agency best assess whether each manufacturer had adequately demonstrated the extent of its ADS' ability to meet each prioritized element of safety?

- **Question 6.** Do you agree or disagree with the core elements (i.e., "sensing," "perception," "planning" and "control") described in this document? Please explain why.

- **Question 7.** Can you suggest any other core element(s) that NHTSA should consider in developing a safety framework for ADS? Please provide the basis of your suggestion.

- **Question 8.** At this early point in the development of ADS, how should NHTSA determine whether regulation is actually needed versus theoretically desirable? Can it be done effectively at this early stage and would it yield a safety outcome outweighing the associated risk of delaying or distorting paths of technological development in ways that might result in forgone safety benefits and/or increased costs?

- **Question 9.** If NHTSA were to develop standards before an ADS-equipped vehicle or an ADS that the Agency could test is widely available, how could NHTSA validate the appropriateness of its standards? How would such a standard impact future ADS development and design? How would such standards be consistent with NHTSA's legal obligations?

- **Question 10.** Which safety standards would be considered the most

and cannot do so if those vehicles are not being sold to the public.

effective as improving safety and consumer confidence and should therefore be given priority over other possible standards? What about other administrative mechanisms available to NHTSA?

- *Question 11.* What rule-based and statistical methodologies are best suited for assessing the extent to which an ADS meets the core functions of ADS safety performance? Please explain the basis for your answers. Rule-based assessment involves the definition of a comprehensive set of rules that define precisely what it means to function safely, and which vehicles can be empirically tested against. Statistical approaches track the performance of vehicles over millions of miles of real-world operation and calculate their probability of safe operation as an extrapolation of their observed frequency of safety violations. If there are other types of methodologies that would be suitable, please identify and discuss them. Please explain the basis for your answers.

- *Question 12.* What types and quantity of evidence would be necessary for reliable demonstrations of the level of performance achieved for the core elements of ADS safety performance?

- *Question 13.* What types and amount of argumentation would be necessary for reliable and persuasive demonstrations of the level of performance achieved for the core functions of ADS safety performance?

B. Question About NHTSA Research

- *Question 14.* What additional research would best support the creation of a safety framework? In what sequence should the additional research be conducted and why? What tools are necessary to perform such research?

C. Questions About Administrative Mechanisms

- *Question 15.* Discuss the administrative mechanisms described in this document in terms of how well they meet the selection criteria in this document.

- *Question 16.* Of the administrative mechanisms described in this document, which single mechanism or combination of mechanisms would best enable the Agency to carry out its safety mission, and why? If you believe that any of the mechanisms described in this document should not be considered, please explain why.

- *Question 17.* Which mechanisms could be implemented in the near term or are the easiest and quickest to implement, and why?

- *Question 18.* Which mechanisms might not be implementable until the

mid or long term but might be a logical next step to those mechanisms that could be implemented in the near term, and why?

- *Question 19.* What additional mechanisms should be considered, and why?

- *Question 20.* What are the pros and cons of incorporating the elements of the framework in new FMVSS or alternative compliance pathways?

- *Question 21.* Should NHTSA consider an alternative regulatory path, with a parallel path for compliance verification testing, that could allow for flexible demonstrations of competence with respect to the core functions of ADS safety performance? If so, what are the pros and cons of such alternative regulatory path? What are the pros and cons of an alternative pathway that would allow a vehicle to comply with either applicable FMVSS or with novel demonstrations, or a combination of both, as is appropriate for the vehicle design and its intended operation? Under what authority could such an approach be developed?

D. Questions About Statutory Authority

- *Question 22.* Discuss how each element of the framework would interact with NHTSA's rulemaking, enforcement, and other authority under the Vehicle Safety Act.

- *Question 23.* Discuss how each element of the framework would interact with Department of Transportation Rules concerning rulemaking, enforcement, and guidance.

- *Question 25.* If you believe that any of the administrative mechanisms described in this document falls outside the Agency's existing rulemaking or enforcement authority under the Vehicle Safety Act or Department of Transportation regulations, please explain the reasons for that belief.

- *Question 24.* If your comment supports the Agency taking actions that you believe may fall outside its existing rulemaking or enforcement authority, please explain your reasons for that belief and describe what additional authority might be needed.

VI. Preparation and Submission of Written Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed in the correct docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of

your comments, including the attachments, to the docket following the instructions given above under

ADDRESSES. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you must submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.**

In addition, you may submit a copy (two copies if submitting by mail or hand delivery) from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will NHTSA consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, NHTSA will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under **ADDRESSES.** The hours of the docket are indicated above in the same location. You may also read the comments on the internet, identified by the docket number at the heading of this document, at <http://www.regulations.gov>.

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the docket for new material.

VII. Regulatory Notices

This action has been determined to be significant under Executive Order 12866, as amended by Executive Order

13563, and DOT's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." In addition, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, we have asked commenters to answer a variety of questions to elicit practical information about alternative approaches and relevant technical data. These comments will help the Department evaluate whether a proposed rulemaking is needed and appropriate. This action is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is an advance notice of proposed rulemaking.

Authority: 49 U.S.C. 30101 *et seq.*, 49 U.S.C. 30182.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

James C. Owens,
Deputy Administrator.

[FR Doc. 2020-25930 Filed 12-2-20; 8:45 am]

BILLING CODE 4910-59-P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1039

[Docket No. EP 704 (Sub-No. 1)]

Review of Commodity, Boxcar, and TOFC/COFC Exemptions

AGENCY: Surface Transportation Board.

ACTION: Announcement of technical conference.

SUMMARY: Granted a request for a technical conference.

DATES: A technical conference will be held on December 18, 2020, at 10:00 a.m. Comments are due by January 22, 2021, and replies are due by February 22, 2021.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at www.stb.gov and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT:

Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: By notice served on September 30, 2020, the Board requested public comment on an approach developed by the Office of Economics (OE) for possible use in considering class exemption and revocation issues to help the Board evaluate market conditions by taking into account a variety of metrics related to or indicative of rail transportation competition. *Review of Commodity, Boxcar, & TOFC/COFC Exemptions*, EP 704 (Sub-No. 1), slip op. at 1, 6 (STB served Sept. 30, 2020).¹ The Board directed that initial comments on the proposed approach be submitted on or before December 4, 2020, and that replies to initial comments be submitted on or before January 4, 2021.

On November 3, 2020, the Association of American Railroads (AAR) filed a request for the Board to schedule a "staff-supervised technical conference" in early December 2020 to discuss the proposed approach. On November 12, 2020, the American Short Line and Regional Railroad Association (ASLRRRA) filed in support of AAR's proposal for a technical conference.

Also on November 3, 2020, AAR separately filed a request for the Board to extend the deadlines for submitting written comments and replies. AAR asks that the Board extend both deadlines by 60 days, or, if a technical conference is held, set the deadlines for 60 and 90 days after the date of the technical conference. According to AAR, given the technical nature of the proposed approach, the voluminous workpapers, the need for data-intensive analysis, and the importance of the issues raised, the current comment deadline of December 4, 2020, does not allow stakeholders sufficient time to analyze the proposed approach and underlying data and prepare responsive comments. On November 12, 2020, ASLRRRA also filed a request that the Board extend the deadlines, asking for the same adjustment to the deadlines.

On November 13, 2020, the American Forest & Paper Association (AF&PA), the Institute of Scrap Recycling Industries, Inc. (ISRI), and the National Industrial Transportation League (NITL) filed a joint reply. They object to AAR's request for a technical conference, arguing that it would add further delay to this rulemaking proceeding, but agree

¹ The Board stated that it would make the workpapers underlying the appendices to its decision available to interested parties under an appropriate confidentiality agreement pursuant to 49 CFR 1244.9. Recently, OE discovered that the workpapers include duplicative queries associated with six input files. The parties in receipt of the workpapers have been notified and provided with clarifying instructions.

to a two-week extension of the comment and reply deadlines. On November 16, 2020, the Portland Cement Association (PCA) replied likewise objecting to the requested technical conference but agreeing to a two-week extension of the comment and reply deadlines.

A technical conference may help to facilitate a better understanding among the interested parties of how the proposal is intended to work. Therefore, the Board will hold a technical conference concerning the approach described in the September 30 decision. The technical conference will take place on December 18, 2020, at 10:00 a.m. The purpose of the technical conference is for Board staff to provide a presentation on the approach and to answer technical questions about the mechanics of the approach. The Board will soon issue a separate decision announcing details on participation.

In light of the technical conference, the Board will provide additional time for interested parties to file comments and subsequent replies. Comments will be due January 22, 2021, and replies will be due February 22, 2021.

It is ordered:

1. AAR's request for a technical conference is granted. The technical conference will be held on December 18, 2020, at 10:00 a.m., as discussed above.

2. Comments are due by January 22, 2021, and replies are due by February 22, 2021.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: November 24, 2020.

By the Board, Allison C. Davis, Director,
Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2020-26420 Filed 12-2-20; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1108

[Docket No. EP 765]

Joint Petition for Rulemaking To Establish a Voluntary Arbitration Program for Small Rate Disputes

AGENCY: Surface Transportation Board.

ACTION: Petition for rulemaking.

SUMMARY: The Board institutes a rulemaking proceeding to consider a proposal to establish a new, voluntary arbitration program intended to help resolve small rate disputes.

DATES: Published in the **Federal Register** on December 3, 2020, the Board will provide an opportunity for additional public participation in a subsequent decision.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at www.stb.gov and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On July 31, 2020, five railroad parties—Canadian National Railway Company (CN); CSX Transportation, Inc. (CSXT); The Kansas City Southern Railway Company (KCS); Norfolk Southern Corporation; and Union Pacific Railroad Company (UP) (collectively, Petitioners)¹—filed a petition for rulemaking to create a new, voluntary small rate case arbitration program, to be codified at 49 CFR part 1108a, which would function alongside the Board's existing arbitration program at 49 CFR part 1108. Petitioners pledge to participate in their proposed arbitration program for a period of five years, provided the Board adopts the program according to the terms set forth in the petition, including (among other things) a right to withdraw from the program if the Board adopts the Final Offer Rate Review (FORR) process² without exempting carriers that participate in the program from the FORR process. (Pet. 2, 17.)

Replies to the petition were filed on August 20, 2020, by the National Grain and Feed Association (NGFA); Olin Corporation (Olin); the American Fuel & Petrochemical Manufacturers (AFPM); and (filing jointly) the American Chemistry Council, Corn Refiners Association, Institute of Scrap Recycling Industries, National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute (Joint Shippers). The U.S. Department of Agriculture (USDA) also filed a reply. Olin, AFPM, and the Joint Shippers generally object to the Petitioners' requested program.³ While USDA and

NGFA express support for commencing a rulemaking proceeding, they advocate for certain changes to the program requested by the Petitioners. (USDA Reply 1; NGFA Reply 1–2.) By decision issued on August 26, 2020, the Director of the Office of Proceedings directed Petitioners to submit a supplemental pleading responding to the replies and allowed other interested persons to respond as well.

On September 10, 2020, Petitioners submitted a supplemental filing, as did AFPM, U.S. Wheat, and the Joint Shippers. Petitioners state that they are agreeable to some modifications to their proposed program, but not to the modifications suggested by other interested parties on confidentiality, exemption from FORR, and a prohibition on revenue adequacy considerations. The shipper groups renewed their objections to Petitioners' proposed program.

The Board favors the resolution of disputes through alternative dispute resolution whenever possible, *see* 49 CFR 1109.1, and has also been actively working to expand access to rate relief, particularly for smaller disputes. The Rate Reform Task Force (RRTF), which the Board established in 2018 to develop recommendations for rate reform, recommended legislation that would permit mandatory arbitration of small disputes, in addition to a Board-administered final offer decision-making process,⁴ the latter of which the Board has proposed in Docket No. EP 755. (RRTF Report 14–20.) In order for the Board to give further consideration to providing a new arbitration program under which parties would voluntarily participate to resolve rate disputes, the Board concludes that it is appropriate to institute a rulemaking proceeding to consider Petitioners' proposal.⁵ The Board will provide an opportunity for additional public participation in a subsequent decision.

List of Subjects in 49 CFR 1108

Administrative practice and procedure, Railroads.

It is ordered:

1. Petitioners' request to initiate a rulemaking proceeding is granted, as discussed above.

Group (U.S. Wheat) also expressed "several concerns" regarding the Petitioners' requested program. *See* U.S. Wheat Comment 6, Aug. 12, 2020, *Final Offer Rate Review*, EP 755.

⁴ The RRTF issued its report on April 25, 2019. The RRTF Report is available on the Board's website at <https://prod.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf>.

⁵ The Board also notes the Petitioners' proposed interrelationship between their proposed arbitration program and the Board's proposal in Docket No. EP 755.

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: November 24, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2020-26506 Filed 12-2-20; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 201125-0318; RTID 0648-XY115]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2021 and 2022 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; harvest specifications and request for comments.

SUMMARY: NMFS proposes 2021 and 2022 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2021 and 2022 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The 2021 harvest specifications supersede those previously set in the final 2020 and 2021 harvest specifications, and the 2022 harvest specifications will be superseded in early 2022 when the final 2022 and 2023 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 4, 2021.

ADDRESSES: Submit comments on this document, identified by NOAA-NMFS-2020-0140, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov/ #!docketDetail;D=NOAA-NMFS-2020-

¹ The petition lists one of the petitioners only as "CN." In their supplemental filing, Petitioners identify this party as the "U.S. operating subsidiaries of CN." Although not identified in either filing, the Board understands "CN" to mean Canadian National Railway Company. Another petitioner is listed as Norfolk Southern Corp., but in the supplemental filing, the party is identified as Norfolk Southern Railway Company (NSR), the operating affiliate of Norfolk Southern Corp.

² The Board proposed FORR in *Final Offer Rate Review*, EP 755 (STB served Sept. 12, 2019).

³ In a comment filed in Docket No. EP 755, the U.S. Wheat Associates Transportation Working

0140, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD) for the Final EIS, and the annual Supplementary Information Reports (SIRs) to the Final EIS prepared for this action are available from <https://www.regulations.gov>. An updated 2021 SIR for the final 2021 and 2022 harvest specifications will be available from the same source. The final 2019 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2019, is available from the North Pacific Fishery Management Council (Council) at 1007 West Third, Suite 400, Anchorage, AK 99501–2252, phone 907–271–2809, or from the Council’s website at <https://www.npfmc.org>. The 2020 SAFE report for the GOA will be available from the same source.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require that NMFS, after consultation with the Council, specify the total allowable catch (TAC) for each target species, the sum of which must be

within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(i)(B)). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. The proposed harvest specifications in Tables 1 through 19 of this rule satisfy these requirements. For 2021 and 2022, the sum of the proposed TAC amounts is 402,783 mt.

Under § 679.20(c)(3), NMFS will publish the final 2021 and 2022 harvest specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2020 meeting, (3) considering information presented in the 2021 SIR to the Final EIS that assesses the need to prepare a Supplemental EIS (see **ADDRESSES**), and (4) considering information presented in the final 2020 SAFE reports prepared for the 2021 and 2022 groundfish fisheries.

Other Actions Affecting or Potentially Affecting the 2021 and 2022 Harvest Specifications

Amendment 109 to the FMP: Revisions to the GOA Pollock Seasons and Pacific Cod Seasonal Allocations

On June 25, 2020, NMFS published a final rule to implement Amendment 109 to the FMP (85 FR 38093), effective January 1, 2021. The final rule revised the pollock seasons and allocations in the GOA, along with Pacific cod season allocations. Amendment 109 modified the existing annual pollock TAC allocation to two equal seasonal allocations (50 percent of TAC), rather than four equal seasonal allocations (25 percent of TAC). The pollock A and B seasons were combined into a January 20 through May 31 A season, and the pollock C and D seasons were combined into a September 1 through November 1 B season. Additionally, Amendment 109 revised the Pacific cod TAC seasonal apportionments to the trawl catcher vessel (CV) sector by increasing the A season allocation and decreasing the B season allocation. The revisions implemented by Amendment 109 are incorporated into these proposed 2021 and 2022 harvest specifications.

Amendment 110 to the FMP: Reclassify Sculpins as an Ecosystem Component Species

On July 10, 2020, NMFS published the final rule to implement Amendment 110 to the FMP (85 FR 41427). The final rule reclassified sculpins in the FMP as an “Ecosystem Component” species,

which is a category of non-target species that are not in need of conservation and management. Accordingly, NMFS will no longer set an Overfishing Level (OFL), acceptable biological catch (ABC), and TAC for sculpins in the GOA groundfish harvest specifications, beginning with these proposed 2021 and 2022 harvest specifications.

Amendment 110 prohibits directed fishing for sculpins, while maintaining recordkeeping and reporting requirements for sculpins. Amendment 110 also establishes a maximum retainable amount for sculpins when directed fishing for groundfish species at 20 percent to discourage targeting sculpin species.

Potential Revisions to the Sablefish Apportionment Process

The Alaska-wide sablefish ABC is apportioned between six areas within the GOA and BSAI (the Bering Sea, Aleutian Islands, Western Gulf, Central Gulf, West Yakutat, and East Yakutat/Southeast Areas). Since 2013, a fixed apportionment methodology has been used to apportion the ABC between those six years. However, a new apportionment methodology is being considered that could affect the apportionment of sablefish ABC, as well as TACs and gear allocations between the trawl and fixed gear sectors, specified in future GOA groundfish harvest specifications. The Joint BSAI and GOA Groundfish Plan Team, Scientific and Statistical Committee (SSC), and Council will review and propose any changes to the sablefish ABC apportionment methodology and could recommend changes for the final 2021 and 2022 groundfish harvest specifications.

Proposed ABC and TAC Specifications

In October 2020, the Council’s SSC, its Advisory Panel (AP), and the Council reviewed the most recent biological and harvest information about the condition of the GOA groundfish stocks. The Council’s GOA Groundfish Plan Team (Plan Team) compiled and presented this information in the final 2019 SAFE report for the GOA groundfish fisheries, dated November 2019 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species’ biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team recommends, and the SSC sets, an OFL and ABC for each species or species group. The amounts proposed for the 2021 and

2022 OFLs and ABCs are based on the 2019 SAFE report. The AP and Council recommended that the proposed 2021 and 2022 TACs be set equal to proposed ABCs for all species and species groups, with the exception of the species and species groups further discussed below. The proposed OFLs, ABCs, and TACs could be changed in the final harvest specifications depending on the most recent scientific information contained in the final 2020 SAFE report. The stock assessments that will comprise, in part, the 2020 SAFE report are available at <https://www.fisheries.noaa.gov/alaska/population-assessments/north-pacific-groundfish-stock-assessment-and-fishery-evaluation>. The final 2020 SAFE report will be available from the same source.

In November 2020, the Plan Team will update the 2019 SAFE report to include new information collected during 2020, such as NMFS stock surveys, revised stock assessments, and catch data. The Plan Team will compile this information and present the draft 2020 SAFE report at the December 2020 Council meeting. At that meeting, the SSC and the Council will review the 2020 SAFE report, and the Council will approve the 2020 SAFE report. The Council will consider information in the 2020 SAFE report, recommendations from the November 2020 Plan Team meeting and December 2020 SSC and AP meetings, public testimony, and relevant written public comments in making its recommendations for the final 2021 and 2022 harvest specifications. Pursuant to § 679.20(a)(2) and (3), the Council could recommend adjusting the TACs if warranted based on the biological condition of groundfish stocks or a variety of socioeconomic considerations, or if required to cause the sum of TACs to fall within the OY range.

Many of the scheduled 2020 GOA and Bering Sea groundfish and ecosystem surveys were cancelled or modified; some were conducted as planned. The Alaska Fisheries Science Center (AFSC) implemented a variety of mitigation efforts to partially address the loss of data from cancelled surveys in 2020. Currently, for 2021 the AFSC plans to resume the normal schedule of surveys for the GOA including a two-vessel GOA trawl survey and GOA acoustic-trawl survey. The stock assessment process is adaptable to the changes in availability of survey data, as many surveys are conducted periodically, rather than annually, and any changes relevant to the stock assessment process will be addressed in the final SAFE report.

Potential Changes Between Proposed and Final Specifications

In previous years, the most significant changes (relative to the amount of assessed tonnage of fish) to the OFLs and ABCs from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys. These surveys provide updated estimates of stock biomass and spatial distribution, and inform changes to the models used for producing stock assessments. At the September 2020 Plan Team meeting, NMFS scientists presented updated and new survey results. Scientists also discussed potential changes to assessment models, and accompanying preliminary stock estimates. At the October 2020 Council meeting, the SSC reviewed this information. The species with potential for a significant model change is Pacific ocean perch. Model changes can result in changes to final OFLs, ABCs, and TACs.

In November 2020, the Plan Team will consider updated survey results and updated stock assessments for groundfish, which will be included in the draft 2020 SAFE report. If the 2020 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2021 and 2022 harvest specifications for that species may reflect an increase from the proposed harvest specifications. Conversely, if the 2020 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2021 and 2022 harvest specifications may reflect a decrease from the proposed harvest specifications.

The proposed 2021 and 2022 OFLs and ABCs are based on the best available biological and scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies the tiers to be used to compute OFLs and ABCs. The tiers applicable to a particular stock or stock complex are determined by the level of reliable information available to the fisheries scientists. This information is categorized into a successive series of six tiers to define OFLs and ABCs, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFLs and ABCs for each groundfish species. The SSC adopted the proposed 2021 and 2022 OFLs and ABCs recommended by the Plan Team for all groundfish species. The proposed

2021 and 2022 TACs are based on the best available biological and socioeconomic information. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations.

Specification and Apportionment of TAC Amounts

The Council recommended proposed 2021 and 2022 TACs that are equal to proposed ABCs for all species and species groups, with the exception of pollock in the combined Western and Central Regulatory Areas and the West Yakutat (WYK) District of the Eastern Regulatory Area (the W/C/WYK Regulatory Area), Pacific cod, shallow-water flatfish in the Western Regulatory Area, arrowtooth flounder, flathead sole in the Western and Central Regulatory Areas, and Atka mackerel. The W/C/WYK Regulatory Area pollock TAC and the GOA Pacific cod TACs are set to account for the State of Alaska's (State's) guideline harvest levels (GHLs) for the State water pollock and Pacific cod fisheries so that the ABCs are not exceeded. Additionally, the proposed GOA Pacific cod TACs include a further reduction, which the Council recommended and NMFS implemented in the 2020 and 2021 harvest specifications, as an additional conservation measure due to the stock's projected 2020 spawning biomass (discussed further below). The shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other fisheries. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. These reductions are described below.

NMFS's proposed apportionments of groundfish species are based on the distribution of biomass among the regulatory areas over which NMFS manages the species. Additional regulations govern the apportionment of pollock, Pacific cod, and sablefish. Additional detail on apportionments of pollock, Pacific cod, and sablefish are described below.

The ABC for the pollock stock in the W/C/WYK Regulatory Area accounts for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. The Plan Team, SSC, AP, and Council have recommended that the sum of all State water and Federal water pollock removals from the GOA not exceed ABC recommendations. For 2021 and 2022, the Council recommended the W/C/WYK pollock ABC include the amount to account for the State's PWS GHL. At the November 2018 Plan Team

meeting, State fisheries managers recommended setting the future PWS GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2021, this yields a PWS pollock GHL of 2,797 mt, an increase of 85 mt from the 2020 PWS GHL of 2,712 mt. After accounting for the PWS GHL, the 2021 and 2022 pollock ABC for the combined W/C/WYK areas is then apportioned among four statistical areas (Areas 610, 620, 630, and 640) as both ABCs and TACs, as described below and detailed in Table 1. The total ABCs and TACs for the four statistical areas, plus the State GHL, do not exceed the combined W/C/WYK ABC. The proposed W/C/WYK 2021 and 2022 pollock ABC is 111,888 mt, and the proposed TAC is 109,091 mt.

Apportionments of pollock to the W/C/WYK management areas are considered to be apportionments of annual catch limit (ACLs) rather than apportionments of ABCs. This more accurately reflects that such apportionments address management concerns, rather than biological or conservation concerns. In addition, apportionments of the ACL in this manner allow NMFS to balance any transfer of TAC among Areas 610, 620, and 630 pursuant to § 679.20(a)(5)(iv)(B) to ensure that the combined W/C/WYK ACL, ABC, and TAC are not exceeded.

NMFS proposes pollock TACs in the Western Regulatory Area (Area 610), Central Regulatory Area (Areas 620 and 630), and the West Yakutat District (Area 640) and the Southeast Outside (SEO) District (Area 650) of the Eastern Regulatory Area of the GOA (see Table 1). NMFS also proposes seasonal apportionment of the annual pollock TAC in the Western and Central Regulatory Areas of the GOA among Statistical Areas 610, 620, and 630. These apportionments are divided equally among the following two seasons: The A season (January 20 through May 31) and the B season (September 1 through November 1) (§§ 679.23(d)(2)(i) and (ii), and 679.20(a)(5)(iv)(A) and (B)). Additional detail is provided below; Table 2 lists these amounts.

The proposed 2021 and 2022 Pacific cod TACs are set to accommodate the State's GHLs for Pacific cod in State waters in the Western and Central Regulatory Areas, as well as in PWS (in the Eastern Regulatory Area) (see Table

1). The Plan Team, SSC, AP, and Council recommended that the sum of all State water and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council recommended the 2021 and 2022 Pacific cod TACs in the Western, Central, and Eastern Regulatory Areas to account for State GHLs. Therefore, the proposed 2021 and 2022 Pacific cod TACs are less than the proposed ABCs by the following amounts: (1) Western GOA, 1,483 mt; (2) Central GOA, 2,115 mt; and (3) Eastern GOA, 305 mt. These amounts reflect the State's 2021 and 2022 GHLs in these areas, which are 30 percent of the Western GOA proposed ABC, and 25 percent of the Eastern and Central GOA proposed ABCs. The proposed 2021 and 2022 Pacific cod TACs also incorporate an additional reduction (40 percent) from the proposed Pacific cod ABCs, after deduction of the State GHL amounts. This reduction was recommended by the Council and implemented by NMFS in the final 2020 and 2021 harvest specifications after the 2019 SAFE indicated that the spawning biomass of Pacific cod would be below 20 percent of the projected unfished spawning biomass during 2020. At the December 2020 meeting, the Council will consider whether to recommend any reduction of the final Pacific cod TACs based on the most recent 2020 biological assessment on the stock condition for Pacific cod.

NMFS also proposes seasonal apportionments of the Pacific cod TACs in the Western and Central Regulatory Areas. A portion of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. The remainder of the annual TAC is apportioned to the B season for jig gear from June 10 through December 31, for hook-and-line and pot gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)). The Western and Central GOA Pacific cod TACs are allocated among various gear and operational sectors. The Pacific cod sector apportionments are discussed in detail in a subsequent section and in Table 3 of this rule.

In 2020, NMFS prohibited directed fishing for Pacific cod in the GOA, in accordance with § 679.20(d)(4). At that

time, NMFS determined that the 2019 biological assessment of stock condition for Pacific cod in the GOA projected that the spawning biomass in the GOA would be below 20 percent of the projected unfished spawning biomass during 2020. Pursuant to § 679.20(d)(4), the directed fishery for Pacific cod in the GOA will remain closed until a subsequent biological assessment projects that the spawning biomass for Pacific cod in the GOA will exceed 20 percent of the projected unfished spawning biomass during a fishing year. At the November 2020 Plan Team and December 2020 SSC meetings, the Plan Team and SSC will review the Pacific cod stock assessment and evaluate the stock condition of Pacific cod to determine whether the directed fishery for Pacific cod in the GOA will remain closed pursuant to § 679.20(d)(4).

The Council's recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area (§ 679.7(b)(1)) and makes available five percent of the combined Eastern Regulatory Area TACs to vessels using trawl gear for use as incidental catch in other trawl groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Additional detail is provided below. Tables 4 and 5 list the proposed 2021 and 2022 allocations of the sablefish TAC to fixed gear and trawl gear in the GOA.

For 2021 and 2022, the Council recommends and NMFS proposes the OFLs, ABCs, and TACs listed in Table 1. These amounts are consistent with the biological condition of groundfish stocks as described in the 2019 SAFE report. The proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. The proposed TACs are adjusted for other biological and socioeconomic considerations. The sum of the proposed TACs for all GOA groundfish is 402,783 mt for 2021 and 2022, which is within the OY range specified by the FMP. These proposed amounts and apportionments by area, season, and sector are subject to change pending consideration of the 2020 SAFE report and the Council's recommendations for the final 2021 and 2022 harvest specifications during its December 2020 meeting.

TABLE 1—PROPOSED 2021 AND 2022 OFLs, ABCs, AND TACs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, AND EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICT OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC ²
Pollock ²	Shumagin (610)	n/a	19,775	19,775
	Chirikof (620)	n/a	56,159	56,159
	Kodiak (630)	n/a	27,429	27,429
	WYK (640)	n/a	5,728	5,728
	W/C/WYK (subtotal)	149,988	111,888	109,091
	SEO (650)	13,531	10,148	10,148
Pacific cod ³	Total	163,519	122,036	119,239
	W	n/a	4,942	2,076
	C	n/a	8,458	3,806
	E	n/a	1,221	549
Sablefish ⁴	Total	30,099	14,621	6,431
	W	n/a	3,003	3,003
	C	n/a	9,963	9,963
	WYK	n/a	3,323	3,323
	SEO	n/a	5,963	5,963
	E (WYK and SEO) (subtotal)	n/a	9,286	9,286
Shallow-water flatfish ⁵	Total (Alaska-wide OFL)	64,765	22,252	22,252
	W	n/a	24,256	13,250
	C	n/a	28,205	28,205
	WYK	n/a	2,820	2,820
	SEO	n/a	1,128	1,128
Deep-water flatfish ⁶	Total	69,129	56,409	45,403
	W	n/a	225	225
	C	n/a	1,914	1,914
	WYK	n/a	2,068	2,068
	SEO	n/a	1,719	1,719
Rex sole	Total	7,040	5,926	5,926
	W	n/a	3,013	3,013
	C	n/a	8,912	8,912
	WYK	n/a	1,206	1,206
	SEO	n/a	2,285	2,285
Arrowtooth flounder	Total	18,779	15,416	15,416
	W	n/a	30,545	14,500
	C	n/a	66,683	66,683
	WYK	n/a	9,946	6,900
	SEO	n/a	17,183	6,900
Flathead sole	Total	148,597	124,357	94,983
	W	n/a	14,191	8,650
	C	n/a	20,799	15,400
	WYK	n/a	2,424	2,424
	SEO	n/a	1,912	1,912
Pacific ocean perch ⁷	Total	47,919	39,326	28,386
	W	n/a	1,379	1,379
	C	n/a	22,727	22,727
	WYK	n/a	1,410	1,410
	W/C/WYK	30,297	25,516	25,516
	SEO	5,303	4,467	4,467
Northern rockfish ⁸	Total	35,600	29,983	29,983
	W	n/a	1,079	1,079
	C	n/a	3,027	3,027
	E	n/a	1	-
Shortraker rockfish ⁹	Total	4,898	4,107	4,106
	W	n/a	52	52
	C	n/a	284	284
	E	n/a	372	372
Dusky rockfish ¹⁰	Total	944	708	708
	W	n/a	759	759
	C	n/a	2,688	2,688

TABLE 1—PROPOSED 2021 AND 2022 OFLs, ABCs, AND TACs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, AND EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICT OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC ²
	WYK	n/a	113	113
	SEO	n/a	38	38
	Total	4,396	3,598	3,598
Rougheye and blackspotted rockfish ¹¹	W	n/a	169	169
	C	n/a	455	455
	E	n/a	587	587
	Total	1,455	1,211	1,211
Demersal shelf rockfish ¹²	SEO	375	238	238
Thornyhead rockfish ¹³	W	n/a	326	326
	C	n/a	911	911
	E	n/a	779	779
	Total	2,688	2,016	2,016
Other rockfish ^{14 15}	W/C combined	n/a	940	940
	WYK	n/a	369	369
	SEO	n/a	2,744	2,744
	Total	5,320	4,053	4,053
Atka mackerel	GW	6,200	4,700	3,000
Big skates ¹⁶	W	n/a	758	758
	C	n/a	1,560	1,560
	E	n/a	890	890
	Total	4,278	3,208	3,208
Longnose skates ¹⁷	W	n/a	158	158
	C	n/a	1,875	1,875
	E	n/a	554	554
	Total	3,449	2,587	2,587
Other skates ¹⁸	GW	1,166	875	875
Sharks	GW	10,913	8,184	8,184
Octopuses	GW	1,307	980	980
Total		632,836	466,791	402,783

¹Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

²The total for the W/C/WYK Regulatory Areas pollock ABC is 111,888 mt. After deducting 2.5 percent (2,797 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 109,091 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 2. In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³The annual Pacific cod TAC is apportioned: (1) 63.84 percent to the A season and 36.16 percent to the B season and (2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. The Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 3 lists the proposed 2021 and 2022 Pacific cod seasonal apportionments and sector allocations.

⁴The Sablefish OFL is set Alaska-wide. Additionally, sablefish is allocated to fixed and trawl gear in 2021 and trawl gear in 2022. Tables 4 and 5 list the proposed 2021 and 2022 allocations of sablefish TACs.

⁵"Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

⁶"Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

⁷"Pacific ocean perch" means *Sebastes alutus*.

⁸"Northern rockfish" means *Sebastes polyspinus*. For management purposes the 1 mt apportionment of ABC to the WYK District of the Eastern Regulatory Area has been included in the "other rockfish" species group.

⁹"Shortraker rockfish" means *Sebastes borealis*.

¹⁰"Dusky rockfish" means *Sebastes variabilis*.

¹¹"Rougheye and blackspotted rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

¹²"Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹³"Thornyhead rockfish" means *Sebastes* species.

¹⁴"Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergray), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, "other rockfish" also includes northern rockfish (*S. polyspinus*).

¹⁵"Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District of the Eastern Regulatory Area means all rockfish species included in the "other rockfish" and demersal shelf rockfish categories. The "other rockfish" species group in the SEO District only includes other rockfish.

¹⁶"Big skates" means *Raja binoculata*.

¹⁷"Longnose skates" means *Raja rhina*.

¹⁸"Other skates" means *Bathyrja* and *Raja* spp.

Proposed Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sharks, and octopuses in reserve for possible apportionment at a later date during the fishing year. Section 679.20(b)(3) authorizes NMFS to reapportion all or part of these reserves. In 2020, NMFS reapportioned all of the reserves in the final harvest specifications. For 2021 and 2022, NMFS proposes reapportionment of each of the reserves for pollock, Pacific cod, flatfish, sharks, and octopuses back into the original TAC from which the reserve was derived. NMFS expects, based on recent harvest patterns, that such reserves will not be necessary and that the entire TAC for each of these species will be caught. The TACs in Table 1 reflect this proposed reapportionment of reserve amounts to the original TAC for these species and species groups, *i.e.*, each proposed TAC for the above-mentioned species or species groups contains the full TAC recommended by the Council.

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into two seasonal allowances of 50 percent. As established by § 679.23(d)(2)(i) through (ii), the A and B season allowances are available from January 20 through May 31 and September 1 through November 1, respectively. This is a change from 2020 and prior years, when there were four specified pollock seasons of equal seasonal allowances of 25 percent. As

described earlier in the preamble, the regulatory revisions implemented by Amendment 109 to the FMP (85 FR 38093, June 25, 2020) decreased the number of seasons to two and established two equal seasonal allowances of 50 percent. NMFS is incorporating these regulatory revisions (which are effective January 1, 2021) into the harvest specifications for the GOA, and Table 2, below, reflects the revised seasons and seasonal allocations implemented by Amendment 109 to the FMP.

The GOA pollock stock assessment continues to use a four-season methodology to determine pollock distribution in the Western and Central Regulatory Areas of the GOA to maintain continuity in the historical pollock apportionment time-series. Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass determined by the most recent NMFS surveys, pursuant to § 679.20(a)(5)(iv)(A). The pollock chapter of the 2019 SAFE report (see **ADDRESSES**) contains a comprehensive description of the apportionment and reasons for the minor changes from past apportionments. For purposes of specifying pollock between two seasons for the Western and Central Regulatory Areas of the GOA, NMFS has summed the A and B season apportionments and the C and D season apportionments as calculated in the 2019 GOA pollock assessment. This yields the seasonal amounts specified for the A season and the B season, respectively.

Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the

Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the subsequent seasonal TAC apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the subsequent season in the other statistical areas, in proportion to the estimated biomass to the subsequent season and in an amount no more than 20 percent of the seasonal TAC apportionment in those statistical areas (§ 679.20(a)(5)(iv)(B)). The proposed 2021 and 2022 pollock TACs in the WYK District of 5,728 mt and the SEO District of 10,148 mt are not allocated by season.

Table 2 lists the proposed 2021 and 2022 area apportionments and seasonal allowances of pollock in the Western and Central Regulatory Areas. The amounts of pollock for processing by the inshore and offshore components are not shown. Section 679.20(a)(6)(i) requires allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is the amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the 2021 fishing year during the course of fishing activities by the offshore component.

TABLE 2—PROPOSED 2021 AND 2022 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC ¹

[Values are rounded to the nearest metric ton]

Season ²	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total ³
A (January 20–May 31)	1,067	42,260	8,354	51,682
B (September 1–November 1)	18,708	13,899	19,074	51,682
Annual Total	19,775	56,159	27,429	103,363

¹ Area apportionments and seasonal allowances may not total precisely due to rounding.

² As established by § 679.23(d)(2)(i) through (ii), the A and B season allowances are available from January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

³ The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Proposed Annual and Seasonal Apportionments of Pacific Cod TAC

Pursuant to § 679.20(a)(12)(i), NMFS proposes allocations for the 2021 and 2022 Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. NMFS also proposes allocating the 2021 and 2022 Pacific cod TACs annually between the inshore (90 percent) and offshore (10 percent) components in the Eastern Regulatory Area of the GOA (§ 679.20(a)(6)(ii)). In the Central GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among CVs less than 50 feet in length overall using hook-and-line gear, CVs equal to or greater than 50 feet in length overall using hook-and-line gear, catcher/processors (CPs) using hook-and-line gear, CVs using trawl gear, CPs using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(B)). In the Western GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among CVs using hook-and-line gear, CPs using hook-and-line gear, CVs using trawl

gear, CPs using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(A)). The overall seasonal apportionments of the annual TAC in the Western GOA are 63.84 percent to the A season and 36.16 percent to the B season, and in the Central GOA are 64.16 percent to the A season and 35.84 percent to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season may be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that is determined by NMFS as likely to go unharvested by a sector may be reallocated to other sectors for harvest during the remainder of the fishing year.

Pursuant to § 679.20(a)(12)(i)(A) and (B), a portion of the annual Pacific cod TACs in the Western and Central GOA will be allocated to vessels with a Federal fisheries permit that use jig gear before the TACs are apportioned among other non-jig sectors. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and

Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (see Table 1 of Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). Jig sector allocation increases are established for a minimum of two years.

NMFS has evaluated the historical harvest performance of the jig sector in the Western and Central GOA, and proposes 2021 and 2022 Pacific cod apportionments to this sector based on its historical harvest performance through 2019. For 2021 and 2022, NMFS proposes that the jig sector receive 3.5 percent of the annual Pacific cod TAC in the Western GOA. This includes a base allocation of 1.5 percent and an additional performance increase of 2.0 percent. NMFS also proposes that the jig sector receive 1.0 percent of the annual Pacific cod TAC in the Central GOA. This includes a base allocation of 1.0 percent and no additional performance increase. The 2014 through 2019 Pacific cod jig allocations, catch, and percent allocation changes are listed in Figure 1.

FIGURE 1—SUMMARY OF WESTERN GOA AND CENTRAL GOA PACIFIC COD CATCH BY JIG GEAR IN 2014 THROUGH 2019, AND CORRESPONDING PERCENT ALLOCATION CHANGES

Area	Year	Initial percent of TAC	Initial TAC allocation	Catch (mt)	Percent of initial allocation	>90% of initial allocation?	Change to percent allocation
Western GOA	2014	2.5	573	785	137	Y	Increase 1%.
	2015	3.5	948	55	6	N	None.
	2016	3.5	992	52	5	N	Decrease 1%.
	2017	2.5	635	49	8	N	Decrease 1%.
	2018	1.5	125	121	97	Y	Increase 1%.
	2019	2.5	134	134	100	Y	Increase 1%.
Central GOA	2014	2.0	797	262	33	N	Decrease 1%.
	2015	1.0	460	355	77	N	None.
	2016	1.0	370	267	72	N	None.
	2017	1.0	331	18	6	N	None.
	2018	1.0	61	0	0	N	None.
	2019	1.0	58	30	52	N	None.

For 2021 and 2022, NMFS proposes apportioning the jig sector allocations for the Western and Central GOA between the A season (60 percent) and the B season (40 percent). This is the same jig sector seasonal apportionments implemented in prior groundfish harvest specifications for the GOA and is consistent with Amendment 83 to the FMP (76 FR 44700; July 26, 2011). NMFS will not evaluate the 2020 performance of the jig sectors in the Western and Central GOA: Since NMFS prohibited directed fishing for all Pacific cod sectors in 2020, the catch for the jig sectors will not reach 90 percent of the initial allocation required for a performance increase (84 FR 70438,

December 23, 2019). As discussed earlier in this preamble, the directed fishing prohibition was issued pursuant to § 679.20(d)(4) and required because the 2019 biological assessment of stock condition for Pacific cod in the GOA projected that the spawning biomass in the GOA would be below 20 percent of the projected unfished spawning biomass during 2020.

As discussed earlier in this preamble, NMFS published a final rule (85 FR 38093, June 25, 2020) to implement Amendment 109 to the FMP. With respect to Pacific cod, Amendment 109 revised the Pacific cod TAC seasonal apportionments to the trawl CV sector by increasing the A season allocation

and decreasing the B season allocation, with the intent of decreasing the annual underharvest of Pacific cod by this sector. NMFS is incorporating the revised seasonal apportionments to trawl CVs between the A and B seasons in accordance with regulatory changes made under Amendment 109. The A season apportionment for trawl CVs has increased to 31.54 percent and 25.29 percent in the Western and Central Regulatory Areas of the GOA, respectively. The B season apportionment for trawl CVs has decreased to 6.86 percent and 16.29 percent in the Western and Central Regulatory Areas of the GOA, respectively. The seasonal allowances of

the trawl CV sector's annual TAC limit in the Western and Central Regulatory Area of the GOA are revised to reflect

the revised seasonal apportionments. Table 3 lists these revisions in the trawl CV seasonal apportionments and sets

forth the seasonal apportionments and allocations of the proposed 2021 and 2022 Pacific cod TACs.

TABLE 3—PROPOSED 2021 AND 2022 SEASONAL APPORTIONMENTS AND ALLOCATIONS OF PACIFIC COD TAC AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	73	N/A	44	N/A	29
Hook-and-line CV	28	0.70	14	0.70	14
Hook-and-line CP	397	10.90	218	8.90	178
Trawl CV	769	31.54	632	6.86	137
Trawl CP	48	0.90	18	1.50	30
Pot CV and Pot CP	761	19.80	397	18.20	365
Total	2,076	63.84	1,323	36.16	753
Central GOA:					
Jig (1.0% of TAC)	38	N/A	23	N/A	15
Hook-and-line <50 CV	550	9.32	351	5.29	199
Hook-and-line ≥50 CV	253	5.61	211	1.10	41
Hook-and-line CP	192	4.11	155	1.00	38
Trawl CV ¹	1,567	25.29	953	16.29	614
Trawl CP	158	2.00	75	2.19	83
Pot CV and Pot CP	1,048	17.83	672	9.97	376
Total	3,806	64.16	2,440	35.84	1,366
Eastern GOA	549	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
		494		55	

¹ Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 145 mt, of the annual Central GOA Pacific cod TAC (see Table 28c to 50 CFR part 679). This apportionment is deducted from the Trawl CV B season allowance (see Table 8: Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Fixed Gear and Trawl Gear

Section 679.20(a)(4)(i) and (ii) requires allocations of sablefish TACs for each of the regulatory areas and districts to fixed and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to fixed gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to fixed gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may be used only to support incidental catch of sablefish while directed fishing for other target species using trawl gear (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS proposes specifying for incidental catch the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District of the

Eastern Regulatory Area. The remainder of the WYK District sablefish TAC is allocated to vessels using fixed gear. This proposed action allocates 100 percent of the sablefish TAC in the SEO District to vessels using fixed gear. This results in a proposed 2021 allocation of 464 mt to trawl gear and 2,859 mt to fixed gear in the WYK District, a proposed 2022 allocation of 5,963 mt to fixed gear in the SEO District, and a proposed 2022 allocation of 464 mt to trawl gear in the WYK District. Table 4 lists the allocations of the proposed 2021 sablefish TACs to fixed and trawl gear. Table 5 lists the allocations of the proposed 2022 sablefish TACs to trawl gear.

The Council recommended that the trawl sablefish TAC be established for two years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Tables 4 and 5 list the proposed 2021 and 2022 trawl allocations, respectively.

The Council also recommended that the fixed gear sablefish TAC be established annually to ensure that the sablefish IFQ fishery is conducted concurrently with the halibut IFQ fishery and is based on the most recent survey information. Since there is an annual assessment for sablefish and since the final harvest specifications are expected to be published before the IFQ season begins (typically, in early March), the Council recommended that the fixed gear sablefish TAC be set annually, rather than for 2 years, so that the best available scientific information could be considered in establishing the sablefish ABCs and TACs. Accordingly, Table 4 lists the proposed 2021 fixed gear allocations, and the 2022 fixed gear allocations will be specified in the 2022 and 2023 harvest specifications.

With the exception of the trawl allocations that are provided to the Rockfish Program (see Table 28c to 50 CFR part 679), directed fishing for sablefish with trawl gear is closed during the fishing year. Also, fishing for

groundfish with trawl gear is prohibited prior to January 20 (§ 679.23(c)). Therefore, it is not likely that the

sablefish allocation to trawl gear would be reached before the effective date of

the final 2022 and 2023 harvest specifications.

TABLE 4—PROPOSED 2021 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO FIXED AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl allocation
Western	3,003	2,402	601
Central ¹	9,963	7,970	1,993
West Yakutat ²	3,323	2,859	464
Southeast Outside	5,963	5,963	0
Total	22,252	19,195	3,058

¹ The trawl allocation of sablefish to the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (1,025 mt). See Table 8: Apportionments of Rockfish Secondary Species in the Central GOA. This results in 968 mt being available for the non-Rockfish Program trawl fisheries.

² The proposed trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts combined) sablefish TAC to trawl gear in the West Yakutat District.

TABLE 5—PROPOSED 2022 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATION TO TRAWL GEAR ¹

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl allocation
Western	3,003	n/a	601
Central ²	9,963	n/a	1,993
West Yakutat ³	3,323	n/a	464
Southeast Outside	5,963	n/a	0
Total	22,252	n/a	3,058

¹ The Council recommended that harvest specifications for the fixed gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

² The trawl allocation of sablefish to the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (1,025 mt). See Table 8: Apportionments of Rockfish Secondary Species in the Central GOA. This results in 968 mt being available for the non-Rockfish Program trawl fisheries.

³ The proposed trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts combined) sablefish TAC to trawl gear in the West Yakutat District.

Proposed Allocations, Apportionments, and Sideboard Limitations for the Rockfish Program

These proposed 2021 and 2022 harvest specifications for the GOA include the fishery cooperative allocations and sideboard limitations established by the Rockfish Program. Program participants are primarily trawl CVs and trawl CPs, with limited participation by vessels using longline gear. The Rockfish Program assigns quota share and cooperative quota to trawl participants for primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) and secondary species (Pacific cod, rougheye rockfish, sablefish, shortraker rockfish, and thornyhead rockfish), allows a participant holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of CP LLP licenses to opt out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear. Longline gear

includes hook-and-line, jig, troll, and handline gear.

Under the Rockfish Program, rockfish primary species in the Central GOA are allocated to participants after deducting for incidental catch needs in other directed fisheries (§ 679.81(a)(2)). Participants in the Rockfish Program also receive a portion of the Central GOA TAC of specific secondary species. In addition to groundfish species, the Rockfish Program allocates a portion of the halibut PSC limit (191 mt) from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d) and Table 28d to 50 CFR part 679). The Rockfish Program also establishes sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish Program fisheries. These restrictions and halibut PSC limits are discussed in a subsequent section in this rule titled “Rockfish Program Groundfish Sideboard and Halibut PSC Limitations.”

Section 679.81(a)(2)(ii) and Table 28e to 50 CFR part 679 require allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 50 mt of dusky rockfish to the entry level longline fishery in 2021 and 2022. The allocation for the entry level longline fishery may increase incrementally each year if the catch exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it reaches the maximum percentage of the TAC for that species. In 2020, the catch for all three primary species did not exceed 90 percent of any allocated rockfish species. Therefore, NMFS is not proposing any increases to the entry level longline fishery 2021 and 2022 allocations in the Central GOA. The remainder of the TACs for the rockfish primary species, after subtracting the incidental catch amounts (ICAs), would be allocated to the CV and CP cooperatives (§ 679.81(a)(2)(iii)). Table 6 lists the allocations of the proposed 2021 and 2022 TACs for each rockfish primary species to the entry level

longline fishery, the potential incremental increases for future years, and the maximum percentages of the

TACs for the entry level longline fishery.

TABLE 6—PROPOSED 2021 AND 2022 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	Proposed 2021 and 2022 allocations [metric tons]	Incremental increase in 2022 if >90 percent of 2021 allocation is harvested [metric tons]	Up to maximum percent of each TAC of:
Pacific ocean perch	5	5	1
Northern rockfish	5	5	2
Dusky rockfish	50	20	5

Section 679.81 requires allocations of rockfish primary species among various sectors of the Rockfish Program. Table 7 lists the proposed 2021 and 2022 allocations of rockfish primary species in the Central GOA to the entry level longline fishery, and rockfish CV and CP cooperatives in the Rockfish Program. NMFS also proposes setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central GOA of 3,000 mt of Pacific

ocean perch, 300 mt of northern rockfish, and 250 mt of dusky rockfish. These amounts are based on recent average incidental catches in the Central GOA by other groundfish fisheries.

Allocations among vessels belonging to CV or CP cooperatives are not included in these proposed harvest specifications. Rockfish Program applications for CV cooperatives and CP cooperatives are not due to NMFS until March 1 of each calendar year;

therefore, NMFS cannot calculate 2021 and 2022 allocations in conjunction with these proposed harvest specifications. NMFS will post the 2021 allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports#central-goa-rockfish> when they become available after March 1.

TABLE 7—PROPOSED 2021 AND 2022 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA TAC	Incidental catch allowance (ICA)	TAC minus ICA	Allocation to the entry level longline ¹ fishery	Allocation to the rockfish cooperatives ²
Pacific ocean perch	22,727	3,000	19,727	5	19,722
Northern rockfish	3,027	300	2,727	5	2,722
Dusky rockfish	2,688	250	2,438	50	2,388
Total	28,442	3,550	24,892	60	24,832

¹ Longline gear includes hook-and-line, jig, troll, and handline gear (§ 679.2).

² Rockfish cooperatives include vessels in CV and CP cooperatives (§ 679.81).

Section 679.81(c) and Table 28c to 50 CFR part 679 requires allocations of rockfish secondary species to CV and CP cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear

allocation, and thornyhead rockfish. CP cooperatives receive allocations of sablefish from the trawl gear allocation, roughey and blackspotted rockfish, shortraker rockfish, and thornyhead rockfish. Table 8 lists the

apportionments of the proposed 2021 and 2022 TACs of rockfish secondary species in the Central GOA to CV and CP cooperatives.

TABLE 8—PROPOSED 2021 AND 2022 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are in metric tons]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	3,806	3.81	145	0.0	0
Sablefish	9,963	6.78	675	3.51	350
Shortraker rockfish	284	0.0	0	40.00	114

TABLE 8—PROPOSED 2021 AND 2022 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES—Continued

[Values are in metric tons]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Rougheye and blackspotted rockfish	455	0.0	0	58.87	268
Thornyhead rockfish	911	7.84	71	26.50	241

Halibut PSC Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. In October 2020, the Council recommended, and NMFS proposes, halibut PSC limits of 1,706 mt for trawl gear, 257 mt for hook-and-line gear, and 9 mt for the demersal shelf rockfish (DSR) fishery in the SEO District for both 2021 and 2022.

The DSR fishery in the SEO District is defined at § 679.21(d)(2)(i)(A). This fishery is apportioned 9 mt of the halibut PSC limit in recognition of its small-scale harvests of groundfish (§ 679.21(d)(2)(i)(A)). The separate halibut PSC limit for the DSR fishery is intended to prevent that fishery from being impacted from the halibut PSC incurred by other GOA fisheries. NMFS estimates low halibut bycatch in the DSR fishery because (1) the duration of the DSR fisheries and the gear soak times are short, (2) the DSR fishery occurs in the winter when there is less overlap in the distribution of DSR and halibut, and (3) the directed commercial DSR fishery has a low DSR TAC. The Alaska Department of Fish and Game sets the commercial GHL for the DSR fishery after deducting (1) estimates of DSR incidental catch in all fisheries (including halibut and subsistence); and (2) the allocation to the DSR sport fish fishery. In 2020, the commercial fishery for DSR was closed due to concerns about declining DSR biomass.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut PSC limit for

2021 and 2022. The Council recommended, and NMFS is proposing, these exemptions because (1) pot gear fisheries have low annual halibut bycatch mortality; (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a CV holds unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)); (3) some sablefish IFQ permit holders hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2020. The calculated halibut bycatch mortality through October 24, 2020 is 756 mt for trawl gear and 2 mt for hook-and-line gear, for a total halibut mortality of 758 mt. This halibut mortality was calculated using groundfish and IFQ halibut catch data from the NMFS Alaska Region's catch accounting system. This accounting system contains historical and recent catch information compiled from each Alaska groundfish and IFQ halibut fishery.

Section 679.21(d)(4)(i) and (ii) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal

distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. Based on public comment, information presented in the 2019 SAFE report, NMFS catch data, State catch data, or International Pacific Halibut Commission (IPHC) stock assessment and mortality data, the Council may recommend or NMFS may make changes to the seasonal, gear-type, or fishery category apportionments of halibut PSC limits for the final 2021 and 2022 harvest specifications pursuant to § 679.21(d)(1) and (d)(4).

The final 2020 and 2021 harvest specifications (85 FR 13802, March 10, 2020) summarized the Council's and NMFS's findings for these FMP and regulatory considerations with respect to halibut PSC limits. The Council's and NMFS's proposed findings for these proposed 2021 and 2022 harvest specifications are unchanged from the final 2020 and 2021 harvest specifications. Table 9 lists the proposed 2021 and 2022 Pacific halibut PSC limits, allowances, and apportionments. The halibut PSC limits in these tables reflect the halibut PSC limits set forth at § 679.21(d)(2) and (3). Section 679.21(d)(4)(iii) and (iv) specifies that any underages or overages of a seasonal apportionment of a halibut PSC limit will be added to or deducted from the next respective seasonal apportionment within the fishing year.

TABLE 9—PROPOSED 2021 AND 2022 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS
[Values are in metric tons]

Trawl gear			Hook-and-line gear ¹				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
January 20–April 1	30.5	519	January 1–June 10	86	221	January 1–December 31.	9
April 1–July 1	20	341	June 10–September 1	2	5		
July 1–August 1	27	462	September 1–December 31	12	31		
August 1–October 1	7.5	128					
October 1–December 31	15	256					
Total		1,706			257		9

¹ The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery in the SEO District and to hook-and-line fisheries other than the DSR fishery. The Council recommended and NMFS proposes that the hook-and-line sablefish fishery, and the pot and jig gear groundfish fisheries, be exempt from halibut PSC limits.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit as bycatch allowances to trawl fishery categories listed in § 679.21(d)(3)(iii). The annual apportionments are based on each category's share of the anticipated halibut bycatch mortality during a fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and "other species" (sharks and octopuses) (§ 679.21(d)(3)(iii)). Halibut mortality incurred while directed fishing for skates with trawl gear accrues towards the shallow-water species fishery halibut PSC limit (69 FR 26320, May 12, 2004).

NMFS will combine available trawl halibut PSC limit apportionments in part of the second season deep-water and shallow-water species fisheries for use in either fishery from May 15 through June 30 (§ 679.21(d)(4)(iii)(D)). This is intended to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. This provides the trawl gear deep-water and shallow-water species fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year.

Table 10 lists the proposed 2021 and 2022 seasonal apportionments of trawl halibut PSC limits between the trawl gear deep-water and the shallow-water species fisheries.

Table 28d to 50 CFR part 679 specifies the amount of the trawl halibut PSC limit that is assigned to the CV and CP sectors that are participating in the Central GOA Rockfish Program. This

includes 117 mt of halibut PSC limit to the CV sector and 74 mt of halibut PSC limit to the CP sector. These amounts are allocated from the trawl deep-water species fishery's halibut PSC third seasonal apportionment. After the combined CV and CP halibut PSC limit allocation of 191 mt to the Rockfish Program, 150 mt remains for the trawl deep-water species fishery's halibut PSC third seasonal apportionment.

Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl fisheries for the last seasonal apportionment during the current fishing year to no more than 55 percent of the unused annual halibut PSC limit apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by any person for the remainder of the fishing year (§ 679.21(d)(4)(iii)(C)).

TABLE 10—PROPOSED 2021 AND 2022 APPORTIONMENT OF THE PACIFIC HALIBUT PSC LIMITS BETWEEN THE TRAWL GEAR SHALLOW-WATER AND DEEP-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water	Deep-water ¹	Total
January 20–April 1	384	135	519
April 1–July 1	85	256	341
July 1–August 1	121	341	462
August 1–October 1	53	75	128
Subtotal, January 20–October 1	643	807	1,450
October 1–December 31 ²			256
Total			1,706

¹ Vessels participating in cooperatives in the Rockfish Program will receive 191 mt of the third season (July 1 through August 1) deep-water species fishery halibut PSC apportionment.

² There is no apportionment between trawl shallow-water and deep-water species fisheries during the fifth season (October 1 through December 31).

Section 679.21(d)(2)(i)(B) requires that the “other hook-and-line fishery” halibut PSC limit apportionment to vessels using hook-and-line gear must be apportioned between CVs and CPs in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the “other hook-and-line fishery” halibut PSC limit between the hook-and-line CV and CP sectors were included in the proposed rule to implement Amendment 83 to the FMP (76 FR 44700, July 26, 2011) and are not repeated here.

Pursuant to § 679.21(d)(2)(iii), the hook-and-line halibut PSC limit for the “other hook-and-line fishery” is apportioned between the CV and CP sectors in proportion to the total Western and Central GOA Pacific cod allocations, which vary annually based on the proportion of the Pacific cod biomass between the Western, Central,

and Eastern GOA. Pacific cod is apportioned among these three management areas based on the percentage of overall biomass per area, as calculated in the 2019 Pacific cod stock assessment. Updated information in the final 2019 SAFE report describes this distributional calculation, which allocates ABC among GOA regulatory areas on the basis of the three most recent stock surveys. For 2021 and 2022, the distribution of the total GOA Pacific cod ABC is 32 percent to the Western GOA, 59 percent to the Central GOA, and 9 percent to the Eastern GOA. Therefore, the calculations made in accordance with § 679.21(d)(2)(iii) incorporate the most recent information on GOA Pacific cod distribution with respect to establishing the annual halibut PSC limits for the CV and CP hook-and-line sectors. Additionally, the annual halibut PSC limits for both the CV and CP sectors of the “other hook-and-line fishery” are divided into three seasonal apportionments, using seasonal

percentages of 86 percent, 2 percent, and 12 percent.

For 2021 and 2022, NMFS proposes annual halibut PSC limits of 144 mt and 113 mt to the hook-and-line CV and hook-and-line CP sectors, respectively. Table 11 lists the proposed 2021 and 2022 apportionments of halibut PSC limits between the hook-and-line CV and the hook-and-line CP sectors of the “other hook-and-line fishery.”

No later than November 1 of each year, NMFS will calculate the projected unused amount of halibut PSC limit by either of the CV or CP hook-and-line sectors of the “other hook-and-line fishery” for the remainder of the year. The projected unused amount of halibut PSC limit is made available to the other hook-and-line sector for the remainder of that fishing year (§ 679.21(d)(2)(iii)(C)), if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations.

TABLE 11—PROPOSED 2021 AND 2022 APPORTIONMENTS OF THE “OTHER HOOK-AND-LINE FISHERIES” ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

“Other than DSR” allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
257	Catcher Vessel	144	January 1–June 10	86	124
			June 10–September 1	2	3
			September 1–December 31	12	17
	Catcher/Processor	113	January 1–June 10	86	97
			June 10–September 1	2	2
			September 1–December 31	12	14

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observers’ estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual GOA stock assessment process. The DMR methodology and findings are included as an appendix to

the annual GOA groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council’s directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, the SSC, and the Council. A summary of the revised methodology is contained in the GOA proposed 2017 and 2018 harvest specifications (81 FR 87881, December 6, 2016), and the comprehensive discussion of the working group’s statistical methodology is available from the Council (see ADDRESSES). The DMR working group’s revised methodology is intended to improve estimation accuracy, transparency, and transferability for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of

data used for calculating the DMRs). Future DMRs may change based on additional years of observer sampling, which could provide more recent and accurate data and which could improve the accuracy of estimation and progress on methodology. The methodology will continue to ensure that NMFS is using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

In October 2020, the Council recommended halibut DMRs derived from the revised methodology for the proposed 2021 and 2022 DMRs. The proposed 2021 and 2022 DMRs use an updated two-year reference period. Comparing the proposed 2021 and 2022 DMRs to the final DMRs from the final 2020 and 2021 harvest specifications, the proposed DMR for Rockfish Program CVs using non-pelagic trawl gear

increased to 60 percent from 52 percent, the proposed DMR for non-Rockfish Program C/Vs using non-pelagic trawl gear increased to 69 percent from 68 percent, the proposed DMR for CPs and

motherships using non-pelagic trawl gear increased to 84 percent from 75 percent, the proposed DMR for CPs using hook-and-line gear increased to 15 percent from 11 percent, and the

proposed DMR for CPs and CVs using pot gear increased to 10 percent from 0 percent. Table 12 lists the proposed 2021 and 2022 DMRs.

TABLE 12—PROPOSED 2021 AND 2022 DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA
[Values are percent of halibut assumed to be dead]

Gear	Sector	Groundfish fishery	Halibut discard mortality rate (percent)
Pelagic trawl	Catcher vessel	All	100
	Catcher/processor	All	100
Non-pelagic trawl	Catcher vessel	Rockfish Program	60
	Catcher vessel	All others	69
	Mothership and catcher/processor	All	84
Hook-and-line	Catcher/processor	All	15
	Catcher vessel	All	13
Pot	Catcher vessel and catcher/processor	All	10

Chinook Salmon Prohibited Species Catch Limits

Section 679.21(h)(2) establishes separate Chinook salmon PSC limits in the Western and Central regulatory areas of the GOA in the trawl pollock directed fishery. These limits require that NMFS close directed fishing for pollock in the Western and Central GOA if the applicable Chinook salmon PSC limit is reached (§ 679.21(h)(8)). The annual Chinook salmon PSC limits in the trawl pollock directed fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set in § 679.21(h)(2)(i) and (ii).

Section 679.21(h)(3) established an initial annual PSC limit of 7,500 Chinook salmon for the non-pollock groundfish trawl fisheries in the Western and Central GOA. This limit is apportioned among three sectors directed fishing for groundfish species other than pollock: 3,600 Chinook salmon to trawl CPs; 1,200 Chinook salmon to trawl CVs participating in the Rockfish Program; and 2,700 Chinook salmon to trawl CVs not participating in the Rockfish Program (§ 679.21(h)(4)). NMFS will monitor the Chinook salmon PSC in the trawl non-pollock GOA groundfish fisheries and close an applicable sector if it reaches its Chinook salmon PSC limit.

The Chinook salmon PSC limit for two sectors, trawl CPs and trawl CVs not participating in the Rockfish Program, may be increased in subsequent years based on the performance of these two sectors and their ability to minimize their use of their respective Chinook salmon PSC limits. If either or both of these two sectors limit its use of

Chinook salmon PSC to a certain threshold amount in 2020 (3,120 for trawl CPs and 2,340 for non-Rockfish Program trawl CVs), that sector will receive an increase to its 2021 Chinook salmon PSC limit (4,080 for trawl CPs and 3,060 for non-Rockfish Program trawl CVs) (§ 679.21(h)(4)). NMFS will evaluate the annual Chinook salmon PSC by trawl CPs and non-Rockfish Program trawl CVs when the 2020 fishing year is complete to determine whether to increase the Chinook salmon PSC limits for these two sectors. Based on preliminary 2020 Chinook salmon PSC data, the trawl CP sector may receive an incremental increase of Chinook salmon PSC limit in 2021, and the non-Rockfish Program trawl CV sector may receive an incremental increase of Chinook salmon PSC limit in 2021. This evaluation will be completed in conjunction with the final 2021 and 2022 harvest specifications.

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limits on AFA CPs and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from harvesting any species of fish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA CPs and CPs

designated on a listed AFA CP permit from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 feet (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands of less than 5,100 mt, and have made at least 40 landings of GOA groundfish from 1995 through 1997 are exempt from GOA CV groundfish sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iv) establishes the CV groundfish sideboard limits in the GOA based on the aggregate retained catch by non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period.

NMFS published a final rule (84 FR 2723, February 8, 2019) that implemented regulations to prohibit non-exempt AFA CVs from directed fishing for specific groundfish species or species groups subject to sideboard limits (§ 679.20(d)(1)(iv)(D) and Table 56 to 50 CFR part 679). Sideboard limits not subject to the final rule continue to be calculated and included in the GOA annual harvest specifications.

Table 13 lists the proposed 2021 and 2022 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Table 13.

TABLE 13—PROPOSED 2021 AND 2022 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Proposed 2021 and 2022 TACs ³	Proposed 2021 and 2022 non-exempt AFA CV sideboard limit
Pollock	A Season; January 20–May 31	Shumagin (610)	0.6047	1,067	645
		Chirikof (620)	0.1167	42,260	4,932
		Kodiak (630)	0.2028	8,354	1,694
	B Season; September 1–November 1	Shumagin (610)	0.6047	18,708	11,313
		Chirikof (620)	0.1167	13,899	1,622
		Kodiak (630)	0.2028	19,074	3,868
	Annual	WYK (640)	0.3495	5,728	2,002
		SEO (650)	0.3495	10,148	3,547
Pacific cod	A Season ¹ ; January 1–June 10	W	0.1331	1,323	176
		C	0.0692	2,440	169
	B Season ² ; September 1–December 31	W	0.1331	753	100
		C	0.0692	1,366	95
Flatfish, shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	28,205	1,656
Flatfish, deep-water	Annual	C	0.0647	1,914	124
		E	0.0128	3,787	48
Rex sole	Annual	C	0.0384	8,912	342
Arrowtooth flounder	Annual	C	0.0280	66,683	1,867
Flathead sole	Annual	C	0.0213	15,400	328
Pacific ocean perch	Annual	C	0.0748	22,727	1,700
		E	0.0466	5,877	274
Northern rockfish	Annual	C	0.0277	3,027	84

¹ The Pacific cod A season for trawl gear does not open until January 20.² The Pacific cod B season for trawl gear closes November 1.³ The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.*Non-Exempt AFA Catcher Vessel Halibut PSC Limits*

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are

based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that

fishery from 1995 through 1997 (§ 679.64(b)(4)(ii)). Table 14 lists the proposed 2021 and 2022 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA.

TABLE 14—PROPOSED 2021 AND 2022 NON-EXEMPT AFA CV HALIBUT PSC SIDEBOARD LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[PSC limits are rounded to the nearest metric ton]

Season	Season dates	Fishery category	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	Proposed 2021 and 2022 PSC limit	Proposed 2021 and 2022 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	384	131
		deep-water	0.070	135	9
2	April 1–July 1	shallow-water	0.340	85	29
		deep-water	0.070	256	18
3	July 1–August 1	shallow-water	0.340	121	41
		deep-water	0.070	341	24
4	August 1–October 1	shallow-water	0.340	53	18
		deep-water	0.070	75	5
5	October 1–December 31	all targets	0.205	256	52
Annual		Total shallow-water .....	.....	.....	219
		Total deep-water .....	.....	.....	56
		Grand Total, all seasons and categories		1,706	328

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish sideboard limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization (CR) Program to expand their level of participation in the GOA groundfish fisheries. Sideboard harvest limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to landings made using an LLP license derived from the history of a restricted vessel, even if

that LLP license is used on another vessel.

The basis for these sideboard harvest limits is described in detail in the final rules implementing the major provisions of the CR Program, including Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) (70 FR 10174, March 2, 2005), Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011), Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), and Amendment 45 to the Crab FMP (80 FR 28539, May 19, 2015). Also, NMFS published a final rule (84 FR 2723, February 8, 2019) that implemented regulations to prohibit non-AFA crab

vessels from directed fishing for all groundfish species or species groups subject to sideboard limits, except for Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas (§ 680.22(e)(1)(iii)). Accordingly, the GOA annual harvest specifications will include only the non-AFA crab vessel groundfish sideboard limits for Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas.

Table 15 lists the proposed 2021 and 2022 groundfish sideboard limits for non-AFA crab vessel. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 15—PROPOSED 2021 AND 2022 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/ gear	Ratio of 1996– 2000 non-AFA crab vessel catch to 1996– 2000 total harvest	Proposed 2021 and 2022 TACs	Proposed 2021 and 2022 non-AFA crab vessel sideboard limit
Pacific cod	A Season; January 1–June 10.	Western Pot CV	0.0997	1,323	132
		Central Pot CV	0.0474	2,440	116
	B Season; September 1–December 31.	Western Pot CV	0.0997	753	75
		Central Pot CV	0.0474	1,366	65

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, CP rockfish sideboard restrictions, and CP opt-out vessel sideboard restrictions (§ 679.82(c)(1)). These sideboards are intended to limit the ability of rockfish harvesters to expand into other fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the

Western GOA and West Yakutat District from July 1 through July 31. Also, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

CPs participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC sideboard limits. These CPs are prohibited from directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the Western GOA and West Yakutat District from July 1 through July 31 (§ 679.82(e)(2)). Holders of CP-designated LLP licenses that opt out of participating in a

Rockfish Program cooperative will be able to access that portion of each rockfish sideboard limits that is not assigned to Rockfish Program cooperatives (§ 679.82(e)(7)). The sideboard ratio for each rockfish fishery in the Western GOA and West Yakutat District is set forth in § 679.82(e)(4). Table 16 lists the proposed 2021 and 2022 Rockfish Program CP rockfish sideboard limits in the Western GOA and West Yakutat District. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat District are not displayed.

TABLE 16—PROPOSED 2021 AND 2022 ROCKFISH PROGRAM SIDEBOARD LIMITS FOR THE WESTERN GOA AND WEST YAKUTAT DISTRICT BY FISHERY FOR THE CATCHER/PROCESSOR (CP) SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	CP sector (% of TAC)	Proposed 2021 and 2022 TACs	Proposed 2021 and 2022 CP sideboard limit
Western GOA	Dusky rockfish	72.3	759	549
	Pacific ocean perch	50.6	1,379	698
	Northern rockfish	74.3	1,079	802
West Yakutat District	Dusky rockfish	Confidential ¹	113	Confidential ¹
	Pacific ocean perch	Confidential ¹	1,410	Confidential ¹

¹ Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Under the Rockfish Program, the CP sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries from July 1 through July 31 (§ 679.82(e)(3) and (e)(5)). Halibut PSC sideboard ratios by fishery are set forth in § 679.82(e)(5). No halibut PSC sideboard limits apply to the CV sector, as vessels participating in a rockfish cooperative receive a portion of the annual halibut PSC limit. CPs that opt out of the Rockfish Program would be

able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to CP rockfish cooperatives. The sideboard provisions for CPs that elect to opt out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboard limits are linked to the catch history of specific vessels that may choose to opt out. After March 1, NMFS will determine which CPs have opted out of the Rockfish Program in 2021, and will know the ratios and amounts

used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out sideboard limits for 2021 and post these limits on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports#central-goa-rockfish>. Table 17 lists the proposed 2021 and 2022 Rockfish Program halibut PSC sideboard limits for the CP sector.

TABLE 17—PROPOSED 2021 AND 2022 ROCKFISH PROGRAM HALIBUT PSC SIDEBOARD LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	Annual halibut PSC limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor	0.10	2.50	1,706	2	43

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl CP sector. The Amendment 80 Program established groundfish and halibut PSC limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment

80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 Program vessels, other than the F/V *Golden Fleece*, to amounts no greater than the limits shown in Table 37 to 50 CFR part 679. Under § 679.92(d), the F/V *Golden Fleece* is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004 (72 FR 52668, September 14, 2007). Table 18 lists the proposed 2021 and 2022 groundfish sideboard limits for Amendment 80 Program vessels. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Table 18.

TABLE 18—PROPOSED 2021 AND 2022 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to the nearest metric ton]

Species	Season	Area	Ratio of amendment 80 sector vessels 1998–2004 catch to TAC	Proposed 2021 and 2022 TAC (mt)	Proposed 2021 and 2022 Amendment 80 vessel sideboard limits (mt)
Pollock	A Season; January 20–May 31	Shumagin (610)	0.003	1,067	3
		Chirikof (620)	0.002	42,260	85
		Kodiak (630)	0.002	8,354	17
	B Season; September 1–November 1	Shumagin (610)	0.003	18,708	56
		Chirikof (620)	0.002	13,899	28
		Kodiak (630)	0.002	19,074	38
Pacific cod	Annual	WYK (640)	0.002	5,728	11
		W	0.020	1,323	26
		C	0.044	2,440	107
	A Season ¹ ; January 1–June 10	W	0.020	753	15
		C	0.044	1,366	60
		WYK	0.034	549	19
Pacific ocean perch	Annual	W	0.994	1,379	1,371
		WYK	0.961	1,410	1,355
Northern rockfish	Annual	W	1.000	1,079	1,079
		WYK	0.764	759	580
Dusky rockfish	Annual	W	0.896	113	101
		WYK			

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historical use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historical use to accommodate two

factors: allocation of halibut PSC cooperative quota under the Rockfish Program and the exemption of the F/V *Golden Fleece* from this restriction (§ 679.92(b)(2)). Table 19 lists the proposed 2021 and 2022 halibut PSC sideboard limits for Amendment 80 Program vessels. These tables

incorporate the maximum percentages of the halibut PSC sideboard limits that may be used by Amendment 80 Program vessels as contained in Table 38 to 50 CFR part 679. Any residual amount of a seasonal Amendment 80 halibut PSC sideboard limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 19—PROPOSED 2021 AND 2022 HALIBUT PSC SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to the nearest metric ton]

Season	Season dates	Fishery category	Historic Amendment 80 use of the annual halibut PSC limit (ratio)	Proposed 2021 and 2022 annual PSC limit (mt)	Proposed 2021 and 2022 Amendment 80 vessel PSC sideboard limit (mt)
1	January 20 –April 1	shallow-water	0.0048	1,706	8
		deep-water	0.0115	1,706	20
2	April 1–July 1	shallow-water	0.0189	1,706	32
		deep-water	0.1072	1,706	183
3	July 1–August 1	shallow-water	0.0146	1,706	25
		deep-water	0.0521	1,706	89
4	August 1–October 1	shallow-water	0.0074	1,706	13
		deep-water	0.0014	1,706	2
5	October 1–December 31	shallow-water	0.0227	1,706	39
		deep-water	0.0371	1,706	63
Annual		Total shallow-water .....	.....	.....	117
		Total deep-water .....	.....	.....	357
Grand Total, all seasons and categories					474

Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws, subject to further review after public comment.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the Final EIS. A SIR is being prepared for the final 2021 and 2022 harvest specifications to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (40 CFR 1501.11(b); § 1502.9(d)(1)). Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the proposed

groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred Alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the estimated number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal

rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained earlier in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. A shoreside processor primarily involved in seafood processing (NAICS code 311710) is

classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

The entities directly regulated by the groundfish harvest specifications include: a) entities operating vessels with groundfish Federal fisheries permits (FFPs) catching FMP groundfish in Federal waters (including those receiving direction allocations of groundfish); b) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the state-waters parallel fisheries; and c) all entities operating vessels fishing for halibut inside three miles of the shore (whether or not they have FFPs).

In 2019 (the most recent year of complete data), there were 871 individual CVs and CPs with gross revenues less than or equal to \$11 million. This estimate does not account for corporate affiliations among vessels, and for cooperative affiliations among fishing entities, since some of the fishing vessels operating in the GOA are members of AFA inshore pollock cooperatives, GOA rockfish cooperatives, or BSAI CR Program cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA because the aggregate gross receipts of all participating members exceed the \$11 million threshold. After accounting for membership in these cooperatives, there are an estimated 812 small CV and 5 small CP entities remaining in the GOA groundfish sector. However, the estimate of these 817 CVs may be an overstatement of the number of small entities. This latter group of vessels had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, trawl gear CVs, and hook-and-line CPs are estimated to be \$350,000, \$780,000, \$1.6 million, and \$2.9 million, respectively.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The action under consideration is the proposed 2021 and 2022 harvest specifications, apportionments, and Pacific halibut prohibited species catch

limits for the groundfish fishery of the GOA. This action is necessary to establish harvest limits for groundfish during the 2021 and 2022 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the proposed harvest specifications is governed by the Council's harvest strategy to govern the catch of groundfish in the GOA. This strategy was selected from among five alternatives, with the preferred alternative harvest strategy being one in which the TACs fall within the range of ABCs recommended by the SSC. Under the preferred harvest strategy, TACs are set to a level that falls within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The TACs associated with preferred harvest strategy are those recommended by the Council in October 2020. OFLs and ABCs for the species were based on recommendations prepared by the Council's Plan Team in September 2020, and reviewed by the Council's SSC in October 2020. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC's OFL and ABC recommendations. The 2021 TACs in these proposed 2021 and 2022 harvest specifications are unchanged from the 2021 TACs in the final 2020 and 2021 harvest specifications (85 FR 13802; March 10, 2020), and the sum of all TACs remains within OY for the GOA.

The proposed 2021 and 2022 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The proposed 2021 and 2022 TACs are based on the best available biological and socioeconomic information. The proposed 2021 and 2022 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2019 SAFE report, which is the most recent, completed SAFE report.

Under this action, the proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. The proposed TACs are within the range of proposed ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and overfishing levels). For most

species and species groups in the GOA, the Council recommended, and NMFS proposes, TACs equal to proposed ABCs, which is intended to maximize harvest opportunities in the GOA.

For some species and species groups, however, the Council recommended and NMFS proposes TACs that are less than the proposed ABCs, including for pollock in the W/C/WYK Regulatory Area, Pacific cod, shallow-water flatfish in the Western Regulatory Area, arrowtooth flounder, flathead sole in the Western and Central Regulatory Areas, and Atka mackerel. In the GOA, increasing TACs for some species may not result in increased harvest opportunities for those species. This is due to a variety of reasons. There may be a lack of commercial or market interest in some species. Additionally, there are fixed, and therefore constraining, PSC limits associated with the harvest of the GOA groundfish species that can lead to an underharvest of flatfish TACs. For this reason, the shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other fisheries. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. Finally, the TACs for two species (pollock and Pacific cod) cannot be set equal to ABC, as the TAC must be reduced to account for the State's GHs in these fisheries. The W/C/WYK Regulatory Area pollock TAC and the GOA Pacific cod TACs are therefore set to account for the State's GHs for the State water pollock and Pacific cod fisheries so that the ABCs are not exceeded. The proposed GOA Pacific cod TACs also include a further reduction implemented in the 2020 and 2021 harvest specifications as an additional conservation measure due to the stock's projected 2020 spawning biomass. For most species in the GOA, the Council recommended, and NMFS proposes, that proposed TACs equal proposed ABCs, unless other conservation or management reasons support proposed TAC amounts less than the proposed ABCs.

Based upon the best available scientific data, and in consideration of the Council's objectives of this action, it appears that there are no significant alternatives to the proposed rule that have the potential to accomplish the

stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. This action is economically beneficial to entities operating in the GOA, including small entities. The action proposes TACs for commercially-valuable species in the GOA and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process during which the Council solicited input from stakeholders, the Council concluded that the proposed harvest specifications would best accomplish the stated objectives articulated in the preamble for this proposed rule, and in applicable statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Adverse impacts on marine mammals or endangered or threatened species resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: November 25, 2020.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 201125–0319; RTID 0648–XY116]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2021 and 2022 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; harvest specifications and request for comments.

SUMMARY: NMFS proposes 2021 and 2022 harvest specifications, apportionments, and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2021 and 2022 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The 2021 harvest specifications supersede those previously set in the final 2020 and 2021 harvest specifications, and the 2022 harvest specifications will be superseded in early 2022 when the final 2022 and 2023 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 4, 2021.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2020–0141, by either of the following methods:

- **Federal e-Rulemaking Portal:** Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0141, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or

individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD) for the Final EIS, and the annual Supplementary Information Reports (SIRs) to the Final EIS prepared for this action are available from <https://www.regulations.gov>. An updated 2021 SIR for the final 2021 and 2022 harvest specifications will be available from the same source. The final 2019 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2019, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, phone 907–271–2809, or from the Council’s website at <https://www.npfmc.org/>. The 2020 SAFE report for the BSAI will be available from the same source.

FOR FURTHER INFORMATION CONTACT:

Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require that NMFS, after consultation with the Council, specify annually the total allowable catch (TAC) for each target species category. The sum of TACs for all groundfish species in the BSAI must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)(A)). Section 679.20(c)(1) further requires that NMFS publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof; prohibited species catch (PSC) allowances; prohibited species quota (PSQ) reserves established by § 679.21; seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; American Fisheries

Act allocations; Amendment 80 allocations; Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii); and acceptable biological catch (ABC) surpluses and reserves for CDQ groups and Amendment 80 cooperatives for flathead sole, rock sole, and yellowfin sole. The proposed harvest specifications set forth in Tables 1 through 15 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final 2021 and 2022 harvest specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2020 meeting, (3) considering information presented in the 2021 SIR to the Final EIS that assesses the need to prepare a Supplemental EIS (see **ADDRESSES**), and (4) considering information presented in the final 2020 SAFE reports prepared for the 2021 and 2022 groundfish fisheries.

Other Actions Affecting or Potentially Affecting the 2021 and 2022 Harvest Specifications

Amendment 121 to the FMP: Reclassify Sculpins as an Ecosystem Component Species

On July 10, 2020, NMFS published the final rule to implement Amendment 121 to the FMP (85 FR 41427). The final rule reclassified sculpins in the FMP as an “Ecosystem Component” species, which is a category of non-target species that are not in need of conservation and management. Accordingly, NMFS will no longer set an Overfishing Level (OFL), ABC, and TAC for sculpins in the BSAI groundfish harvest specifications, beginning with these proposed 2021 and 2022 harvest specifications. Amendment 121 prohibits directed fishing for sculpins, while maintaining recordkeeping and reporting requirements for sculpins. Amendment 121 also establishes a maximum retainable amount for sculpins when directed fishing for groundfish species at 20 percent to discourage targeting sculpin species.

Potential Revisions to the Sablefish Apportionment Process

The Alaska-wide sablefish ABC is apportioned between six areas within the GOA and BSAI (the Bering Sea, Aleutian Islands, Western Gulf, Central Gulf, West Yakutat, and East Yakutat/Southeast Areas). Since 2013, a fixed apportionment methodology has been used to apportion the ABC between those six areas. However, a new apportionment methodology is being considered that could affect the

apportionment of sablefish ABC, as well as TACs and gear allocations between the trawl and fixed gear sectors, specified in future BSAI groundfish harvest specifications. The Joint BSAI and GOA Groundfish Plan Team, Scientific and Statistical Committee (SSC), and Council will review and propose any changes to the sablefish ABC apportionment methodology and could recommend changes for the final 2021 and 2022 groundfish harvest specifications.

State of Alaska Guideline Harvest Levels

For 2021 and 2022, the Board of Fisheries (BOF) for the State of Alaska (State) established the guideline harvest level (GHL) for vessels using pot gear in State waters in the Bering Sea subarea (BS). The 2020 BS GHL was set at 9 percent of the 2020 BS ABC (85 FR 13553; March 9, 2020). The State’s pot gear BS GHL will increase one percent annually up to 15 percent of the BS ABC, if at least 90 percent of the GHL is harvested by November 15 of the preceding year. In 2020, 90 percent of the GHL has been harvested by November 15, 2020, which triggers a one percent increase in the GHL in 2021 and results in a 2021 GHL of 10 percent of the Pacific cod proposed BS ABC. If at least 90 percent of the 2021 BS GHL is not harvested by November 15, 2021, then the 2022 BS GHL will remain at the same percent (10 percent) as the 2021 BS GHL. If 90 percent of the 2021 BS GHL is harvested by November 15, 2021, then the 2022 BS GHL will increase by one percent and the 2022 BS TAC will be set to account for the increased BS GHL. Also, for 2021 and 2022, the BOF established an additional GHL for vessels using jig gear in State waters in the BS equal to 45 mt of Pacific cod. The Council and its BSAI Groundfish Plan Team (Plan Team), Scientific and Statistical Committee (SSC), and Advisory Panel (AP) recommended that the sum of all State and Federal water Pacific cod removals from the BS not exceed the proposed ABC recommendations for Pacific cod in the BS. Accordingly, the Council recommended, and NMFS proposes, that the 2021 and 2022 Pacific cod TACs in the BS account for the State’s GHLs for Pacific cod caught in State waters.

For 2021 and 2022, the BOF for the State established the GHL in State waters in the Aleutian Islands subarea (AI). The 2020 AI GHL was set at 35 percent of the 2020 AI ABC (85 FR 13553; March 9, 2020). The AI GHL will increase annually by 4 percent of the AI ABC, if 90 percent of the GHL is harvested by November 15 of the preceding year, but may not exceed 39

percent of the AI ABC or 15 million pounds (6,804 mt). In 2020, 90 percent of the GHL has been harvested by November 15, 2020, which triggers a 4 percent increase in the GHL in 2021; however, 39 percent of the proposed 2021 and 2022 AI ABC is 8,034 mt, which exceeds the AI GHL limit of 6,804 mt. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal water Pacific cod removals from the AI not exceed the proposed ABC recommendations for Pacific cod in the AI. Accordingly, the Council recommended, and NMFS proposes, that the 2021 and 2022 Pacific cod TACs in the AI account for the State’s GHL of 6,804 mt for Pacific cod caught in State waters.

Proposed ABC and TAC Harvest Specifications

In October 2020, the Council’s SSC, its AP, and the Council reviewed the most recent biological and harvest information on the condition of the BSAI groundfish stocks. The Plan Team compiled and presented this information in the final 2019 SAFE report for the BSAI groundfish fisheries, dated November 2019 (see **ADDRESSES**). The final 2020 SAFE report will be available from the same source.

The proposed 2021 and 2022 harvest specifications are based on the final 2021 harvest specifications published in March 2020 (85 FR 13553; March 9, 2020), which were set after consideration of the most recent 2019 SAFE report, and are based on the initial survey data that were presented at the September 2020 Plan Team meeting. The proposed 2021 and 2022 harvest specifications in this action are subject to change in the final harvest specifications to be published by NMFS following the Council’s December 2020 meeting.

Many of the scheduled 2020 Gulf of Alaska (GOA) and BSAI groundfish and ecosystem surveys were cancelled or modified, although some were conducted as planned. The Alaska Fisheries Science Center (AFSC) implemented a variety of mitigation efforts to partially address the loss of data from cancelled surveys in 2020. Currently, for 2021 the AFSC plans to resume the normal schedule of surveys for the GOA and eastern Bering Sea (EBS), including the EBS trawl survey and a northern Bering Sea trawl survey. The stock assessment process is adaptable to the changes in availability of survey data, as many surveys only are conducted periodically, rather than annually, and any changes relevant to

the stock assessment process will be addressed in the final SAFE report.

In November 2020, the Plan Team will update the 2019 SAFE report to include new information collected during 2020, such as NMFS stock surveys, revised stock assessments, and catch data. The Plan Team will compile this information and present the draft 2020 SAFE report at the December 2020 Council meeting. At that meeting, the SSC and the Council will review the 2020 SAFE report, and the Council will approve the 2020 SAFE report. The Council will consider information in the 2020 SAFE report, recommendations from the November 2020 Plan Team meeting and December 2020 SSC and AP meetings, public testimony, and relevant written comments in making its recommendations for the final 2021 and 2022 harvest specifications.

Potential Changes Between Proposed and Final Specifications

In previous years, the most significant changes (relative to the amount of assessed tonnage of fish) to the OFLs and ABCs from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys. These surveys provide updated estimates of stock biomass and spatial distribution, and inform changes to the models or the models' results used for producing stock assessments. Any changes to models used in stock assessments will be recommended by the Plan Team in November 2020 and then included in the final 2020 SAFE report. Model changes can result in changes to final OFLs, ABCs, and TACs. The final 2020 SAFE report will include the most recent information, such as catch data.

The final harvest specification amounts for these stocks are not expected to vary greatly from these proposed harvest specification amounts. If the 2020 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2021 and 2022 harvest specifications may reflect an increase from the proposed harvest specifications. Conversely, if the 2020 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2021 and 2022 harvest specifications may reflect a decrease from the proposed harvest specifications. In addition to changes driven by biomass trends, there may be changes in TACs due to the sum of

ABCs exceeding 2 million mt. Since the regulations require TACs to be set to an OY between 1.4 and 2 million mt, the Council may be required to recommend TACs that are lower than the ABCs recommended by the Plan Team and the SSC, if setting all TACs equal to ABCs would cause the sum of TACs to exceed an OY of 2 million mt. Generally, total ABCs greatly exceed 2 million mt in years with a large pollock biomass. For both 2021 and 2022, NMFS anticipates that the sum of the final ABCs will exceed 2 million mt. NMFS expects that the final TACs for the BSAI for both 2021 and 2022 will equal 2 million mt each year.

The proposed 2021 and 2022 OFLs and ABCs are based on the best available biological and scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies a series of six tiers to define OFLs and ABCs based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest. The proposed 2021 and 2022 TACs are based on the best available biological and socioeconomic information.

In October 2020, the SSC adopted the proposed 2021 and 2022 OFLs and ABCs recommended by the Plan Team for all groundfish. The Council adopted the SSC's OFL and ABC recommendations. The OFL and ABC amounts are, for the most part, unchanged from the final 2021 harvest specifications published in the **Federal Register** on March 9, 2020 (85 FR 13553). However, the OFL and ABC for rock sole was increased because a data file error was discovered in the 2019 stock assessment. Also, sculpins have been reclassified in the FMP as an "Ecosystem Component" species, which is a category of non-target species that are not in need of conservation and management (85 FR 41427; July 10, 2020). Therefore, starting with these proposed harvest specifications, the OFL, ABC, and TAC for sculpins will no longer be set in the BSAI harvest specifications. The 5,000 mt that had been specified for the 2021 sculpin TAC has been distributed among AI Greenland turbot, BSAI Kamchatka flounder, BSAI Alaska plaice, Bering Sea and Eastern Aleutian Islands (BS/

EAI) blackspotted and rougheye rockfish, BSAI sharks, and BSAI octopuses. The sum of the proposed 2021 and 2022 ABCs for all assessed groundfish is 2,984,164 mt. The sum of the proposed TACs is 2,000,000 mt.

Specification and Apportionment of TAC Amounts

The Council recommended proposed 2021 and 2022 TACs that are equal to the proposed ABCs for 2021 and 2022 BS sablefish, Central AI Atka mackerel, BS and Eastern AI Atka mackerel, BS Pacific ocean perch, Central AI Pacific ocean perch, Eastern AI Pacific ocean perch, Central AI and Western AI blackspotted and rougheye rockfish, and AI "other rockfish." The Council recommended proposed TACs less than the respective proposed ABCs for all other species. Section 679.20(a)(5)(iii)(B)(1) requires the AI pollock TAC to be set at 19,000 mt when the AI pollock ABC equals or exceeds 19,000 mt. The Bogoslof pollock TAC is set to accommodate incidental catch amounts. TACs are set so that the sum of the overall TAC does not exceed the BSAI OY.

The proposed groundfish OFLs, ABCs, and TACs are subject to change pending the completion of the final 2020 SAFE report and the Council's recommendations for the final 2021 and 2022 harvest specifications during its December 2020 meeting. These proposed amounts are consistent with the biological condition of groundfish stocks as described in the 2019 SAFE report. The proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. The proposed TACs have been adjusted for other biological information and socioeconomic considerations, including maintaining the entire TAC within the required OY range. Pursuant to Section 3.2.3.4.1 of the FMP, the Council could recommend adjusting the final TACs if "warranted on the basis of bycatch considerations, management uncertainty, or socioeconomic considerations; or if required in order to cause the sum of the TACs to fall within the OY range." Table 1 lists the proposed 2021 and 2022 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—PROPOSED 2021 AND 2022 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI¹

[Amounts are in metric tons]

Species	Area	Proposed 2021 and 2022				
		OFL	ABC	TAC	ITAC ²	CDQ ^{3,4}
Pollock ⁴	BS	3,385,000	1,767,000	1,450,000	1,305,000	145,000
	AI	70,970	58,384	19,000	17,100	1,900
	Bogoslof	183,080	137,310	75	75	
Pacific cod ⁵	BS	125,734	102,975	92,633	82,721	9,912
	AI	27,400	20,600	13,796	12,320	1,476
Sablefish	Alaska-wide	64,765	n/a	n/a	n/a	n/a
	BS	n/a	2,865	2,865	1,218	107
	AI	n/a	3,891	2,500	531	47
Yellowfin sole	BSAI	287,943	261,497	168,900	150,828	18,072
Greenland turbot	BSAI	10,006	8,510	5,795	4,926	n/a
	BS	n/a	7,429	5,125	4,356	548
	AI	n/a	1,081	670	570	
Arrowtooth flounder	BSAI	86,647	73,804	10,000	8,500	1,070
Kamchatka flounder	BSAI	11,472	9,688	7,116	6,049	
Rock sole ⁶	BSAI	251,800	245,400	49,000	43,757	5,243
Flathead sole ⁷	BSAI	86,432	71,079	24,000	21,432	2,568
Alaska plaice	BSAI	36,500	30,700	24,000	20,400	
Other flatfish ⁸	BSAI	21,824	16,368	5,000	4,250	
Pacific Ocean perch	BSAI	56,589	46,885	42,036	36,953	n/a
	BS	n/a	13,600	13,600	11,560	
	EAI	n/a	10,619	10,619	9,483	1,136
	CAI	n/a	7,817	7,817	6,981	836
	WAI	n/a	14,849	10,000	8,930	1,070
	BSAI	19,070	15,683	10,000	8,500	
Blackspotted/ Roughyeyrockfish ¹⁰	BSAI	1,090	899	439	373	
	BS/EAI	n/a	560	100	85	
	CAI/WAI	n/a	339	339	288	
Shortraker rockfish	BSAI	722	541	375	319	
Other rockfish ¹⁰	BSAI	1,793	1,344	1,088	925	
	BS	n/a	956	700	595	
	AI	n/a	388	388	330	
	BSAI	74,800	64,400	54,482	48,652	5,830
Atka mackerel	EAI/BS	n/a	22,540	22,540	20,128	2,412
	CAI	n/a	13,524	13,524	12,077	1,447
	WAI	n/a	28,336	18,418	16,447	1,971
	BSAI	48,289	40,248	16,000	13,600	
Skates	BSAI	689	517	200	170	
Sharks	BSAI	4,769	3,576	700	595	
Octopuses	BSAI					
Total		4,857,384	2,984,164	2,000,000	1,789,193	194,816

¹ These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea subarea (BS) includes the Bogoslof District.

² Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 15 percent of each TAC is put into a non-specified reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnote 3 and 4).

³ For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and BSAI arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). The 2021 hook-and-line or pot gear portion of the sablefish ITAC and CDQ reserve will not be specified until the final 2021 and 2022 harvest specifications. Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, blackspotted and roughyey rockfish, "other rockfish," skates, sharks, and octopuses are not allocated to the CDQ Program.

⁴ Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3.9 percent), is further allocated by sector for a pollock directed fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(2), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery.

⁵ The BS Pacific cod TAC is set to account for the 10 percent, plus 45 mt, of the BS ABC for the State of Alaska's (State) guideline harvest level in State waters of the BS. The AI Pacific cod TAC is set to account for 39 percent of the AI ABC for the State guideline harvest level in State waters of the AI, unless the State guideline harvest level would exceed 15 million pounds (6,804 mt), in which case the TAC is set to account for the maximum authorized State guideline harvest level of 6,804 mt.

⁶ "Rock sole" includes *Lepidopsetta polyxystra* (Northern rock sole) and *Lepidopsetta bilineata* (Southern rock sole).

⁷ "Flathead sole" includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

⁸ "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

⁹ "Blackspotted/Roughyey rockfish" includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianus* (roughyey).

¹⁰ "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, dark rockfish, northern rockfish, shortraker rockfish, and blackspotted/roughyey rockfish.

Note: Regulatory areas and districts are defined at § 679.2 (BSAI = Bering Sea and Aleutian Islands management area, BS = Bering Sea sub-area, AI = Aleutian Islands subarea, EAI = Eastern Aleutian district, CAI = Central Aleutian district, WAI = Western Aleutian district.)

Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and AI Pacific Ocean Perch

Section 679.20(b)(1)(i) requires NMFS to reserve 15 percent of the TAC for each target species category (except for pollock, hook-and-line and pot gear allocation of sablefish, and Amendment 80 species) in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that NMFS allocate 20 percent of the hook-and-line or pot gear allocation of sablefish to the fixed gear sablefish CDQ reserve for each subarea. Section 679.20(b)(1)(ii)(D) requires that NMFS allocate 7.5 percent of the trawl gear allocation of sablefish and 10.7 percent of BS Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that NMFS allocate 10.7 percent of the TACs for Atka mackerel, AI Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod to the respective CDQ reserves.

Sections 679.20(a)(5)(i)(A) and 679.31(a) require allocation of 10 percent of the BS pollock TAC to the pollock CDQ directed fishing allowance (DFA). Sections 679.20(a)(5)(iii)(B)(2)(i) and 679.31(a) require 10 percent of the AI pollock TAC be allocated to the pollock CDQ DFA. The entire Bogoslof District pollock TAC is allocated as an ICA pursuant to § 679.20(a)(5)(ii) because the Bogoslof District is closed to directed fishing for pollock by regulation (§ 679.22(a)(7)(B)). With the exception of the hook-and-line or pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear.

Pursuant to § 679.20(a)(5)(i)(A)(1), NMFS proposes a pollock ICA of 3.9 percent or 50,895 mt of the BS pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidentally retained and discarded catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2000 through 2020. During this 21-year period, the pollock incidental catch ranged from a low of 2.2 percent in 2006 to a high of 4.6 percent in 2014, with a 21-year average of 3 percent. Pursuant to §§ 679.20(a)(5)(iii)(B)(2)(i) and (ii), NMFS proposes a pollock ICA of 14 percent or 2,400 mt of the AI pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock

incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2020. During this 18-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 17 percent in 2014, with an 18-year average of 8 percent.

Pursuant to §§ 679.20(a)(8) and (10), NMFS proposes ICAs of 3,000 mt of flathead sole, 6,000 mt of rock sole, 4,000 mt of yellowfin sole, 10 mt of Western Aleutian District Pacific ocean perch, 60 mt of Central Aleutian District Pacific ocean perch, 100 mt of Eastern Aleutian District Pacific ocean perch, 20 mt of Western Aleutian District Atka mackerel, 75 mt of Central Aleutian District Atka mackerel, and 800 mt of Eastern Aleutian District and BS Atka mackerel, after subtracting the 10.7 percent CDQ reserves. These ICAs are based on NMFS's examination of the average incidental catch in other target fisheries from 2003 through 2020.

The remainder of the non-specified reserve are not designated by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserve during the year, provided that such apportionments are consistent with § 679.20(a)(3) and do not result in overfishing (see § 679.20(b)(1)(i)).

Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that BS pollock TAC be apportioned as a DFA, after subtracting 10 percent for the CDQ Program and 3.9 percent for the ICA, as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor (CP) sector, and 10 percent to the mothership sector. In the BS, 45 percent of the DFA is allocated to the A season (January 20 to June 10), and 55 percent of the DFA is allocated to the B season (June 10 to November 1) (§§ 679.20(a)(5)(i)(B)(1) and 679.23(e)(2)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock TAC remaining in the AI after subtracting 1,900 mt for the CDQ DFA (10 percent), and 2,400 mt for the ICA (§ 679.20(a)(5)(iii)(B)(2)). In the AI, the total A season apportionment of the pollock TAC (including the AI directed fishery allocation, the CDQ DFA, and the ICA) may equal up to 40 percent of the ABC for AI pollock, and the remainder of the pollock TAC is allocated to the B season

(§ 679.20(a)(5)(iii)(B)(3)). Table 2 lists these proposed 2021 and 2022 amounts.

Section 679.20(a)(5)(iii)(B)(6) sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541. In Area 543, the A season pollock harvest limit is no more than 5 percent of the AI pollock ABC. In Area 542, the A season pollock harvest limit is no more than 15 percent of the AI pollock ABC. In Area 541, the A season pollock harvest limit is no more than 30 percent of the AI pollock ABC.

Section 679.20(a)(5)(i)(A)(4) includes several specific requirements regarding BS pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the CP sector be available for harvest by AFA catcher vessels (CVs) with CP sector endorsements, unless the Regional Administrator receives a cooperative contract that allows the distribution of harvest among AFA CPs and AFA CVs in a manner agreed to by all members. Second, AFA CPs not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the CP sector. Table 2 lists the proposed 2021 and 2022 allocations of pollock TAC. Tables 13, 14, and 15 list the AFA CP and CV harvesting sideboard limits. The BS inshore pollock cooperative and open access sector allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2021 have not been submitted to NMFS, and NMFS therefore cannot calculate 2021 allocations, NMFS has not included inshore cooperative tables in these proposed harvest specifications. NMFS will post the 2021 AFA inshore pollock cooperative and open access sector allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports> prior to the start of the fishing year on January 1, 2021, based on the harvest specifications effective on that date.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to no more than 28 percent of the annual pollock DFA before 12:00 noon, April 1, as provided in § 679.20(a)(5)(i)(C). The A season pollock SCA harvest limit will be

apportioned to each sector in proportion to each sector's allocated percentage of the DFA.

TABLE 2—PROPOSED 2021 AND 2022 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) ¹

[Amounts are in metric tons]

Area and sector	2021 and 2022 allocations	A season ¹		B season ¹
		A season DFA	SCA harvest limit ²	B season DFA
Bering Sea subarea TAC	1,450,000	n/a	n/a	n/a
CDQ DFA	145,000	65,250	40,600	79,750
ICA ¹	50,895	n/a	n/a	n/a
Total Bering Sea DFA (non-CDQ)	1,254,105	564,347	351,149	689,758
AFA Inshore	627,053	282,174	175,575	344,879
AFA Catcher/Processors ³	501,642	225,739	140,460	275,903
Catch by CPs	459,002	206,551	n/a	252,451
Catch by CVs ³	42,640	19,188	n/a	23,452
Unlisted CP Limit ⁴	2,508	1,129	n/a	1,380
AFA Motherships	125,411	56,435	35,115	68,976
Excessive Harvesting Limit ⁵	219,468	n/a	n/a	n/a
Excessive Processing Limit ⁶	376,232	n/a	n/a	n/a
Aleutian Islands subarea ABC	58,384	n/a	n/a	n/a
Aleutian Islands subarea TAC	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	14,700	n/a	
Area harvest limit ⁷	n/a	n/a	n/a	n/a
541	17,515	n/a	n/a	n/a
542	8,758	n/a	n/a	n/a
543	2,919	n/a	n/a	n/a
Bogoslof District ICA ⁸	75	n/a	n/a	n/a

¹ Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (3.9 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (CPs)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) through (iii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the AI pollock ABC.

² In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

³ Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

⁴ Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted CPs are limited to harvesting not more than 0.5 percent of the C/P sector's allocation of pollock.

⁵ Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

⁶ Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

⁷ Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

⁸ Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, ICAs for the BSAI trawl limited access sector and non-trawl gear sectors, and the jig gear allocation (Table 3). The percentage of the ITAC for Atka mackerel allocated to the Amendment 80 and BSAI trawl limited access sectors is listed in Table 33 to 50 CFR part 679 and in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel TAC may be allocated to vessels using jig gear. The percent of this allocation is recommended annually by the Council

based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS proposes, a 0.5 percent allocation of the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2021 and 2022.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through December 31 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to trawl CDQ Atka mackerel

fishing. The ICA and jig gear allocations are not apportioned by season.

Sections 679.20(a)(8)(ii)(C)(1)(i) and (ii) limit Atka mackerel catch within waters 0 nm to 20 nmi of Steller sea lion sites listed in Table 6 to 50 CFR part 679 and located west of 178° W longitude to no more than 60 percent of the annual TACs in Areas 542 and 543, and equally divides the annual TAC between the A and B seasons as defined at § 679.23(e)(3). Section 679.20(a)(8)(ii)(C)(2) requires that the annual TAC in Area 543 will be no more than 65 percent of the ABC in Area 543. Section 679.20(a)(8)(ii)(D) requires that any unharvested Atka mackerel A season allowance that is added to the B season be prohibited from being

harvested within waters 0 nm to 20 nmi of Steller sea lion sites listed in Table 6 to 50 CFR part 679 and located in Areas 541, 542, and 543. Table 3 lists the proposed 2021 and 2022 Atka mackerel season allowances, area allowances, and the sector allocations. One Amendment 80 cooperative has formed for the 2021 fishing year. Because all Amendment 80 vessels are part of the cooperative, no

allocation to the Amendment 80 limited access sector is required for 2021. The 2022 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2021. NMFS will post the 2022 Amendment 80 cooperatives and Amendment 80

limited access sector allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska> prior to the start of the fishing year on January 1, 2022, based on the harvest specifications effective on that date.

TABLE 3—PROPOSED 2021 AND 2022 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE (ICA), AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector ¹	Season ^{2 3 4}	2021 and 2022 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District ⁵	Western Aleutian District ⁵
TAC	n/a	22,540	13,524	18,418
CDQ reserve	Total	2,412	1,447	1,971
	A	1,206	724	985
	Critical habitat ⁵	n/a	434	591
	B	1,206	724	985
	Critical habitat ⁵	n/a	434	591
non-CDQ TAC	n/a	20,128	12,077	16,447
ICA	Total	800	75	20
Jig ⁶	Total	97		
BSAI trawl limited access	Total	1,923	1,200	
	A	962	600	
	Critical habitat ⁵	n/a	360	
	B	962	600	
	Critical habitat ⁵	n/a	360	
Amendment 80	Total	17,308	10,802	16,427
	A	8,654	5,401	8,214
	Critical habitat ⁵	n/a	3,241	4,928
	B	8,654	5,401	8,214
	Critical habitat ⁵	n/a	3,241	4,928

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10, and the B season from June 10 to December 31.

⁵ Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; § 679.20(a)(8)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and § 679.20(a)(8)(ii)(C)(2) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

⁶ Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The proposed amount of this allocation for 2021 and 2022 is 0.5 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

The Council separated BS and AI subarea OFLs, ABCs, and TACs for Pacific cod in 2014 (79 FR 12108; March 4, 2014). Section 679.20(b)(1)(ii)(C) allocates 10.7 percent of the BS TAC and the AI TAC to the CDQ Program. After CDQ allocations have been deducted from the respective BS and AI Pacific cod TACs, the remaining BS and AI Pacific cod TACs are combined for calculating further BSAI Pacific cod sector allocations. If the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS

will prohibit directed fishing for non-CDQ Pacific cod in that subarea, as provided in § 679.20(d)(1)(iii).

Sections 679.20(a)(7)(i) and (ii) allocate to the non-CDQ sectors the combined BSAI Pacific cod TAC, after subtracting 10.7 percent for the CDQ Program, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line or pot CVs less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line CPs, 8.4 percent to pot CVs greater than or equal

to 60 ft (18.3 m) LOA, 1.5 percent to pot CPs, 2.3 percent to AFA trawl CPs, 13.4 percent to the Amendment 80 sector, and 22.1 percent to trawl CVs. The BSAI ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of BSAI Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2021 and 2022, the Regional Administrator proposes a BSAI ICA of 400 mt, based on anticipated incidental catch by these sectors in other fisheries.

The BSAI ITAC allocation of Pacific cod to the Amendment 80 sector is

established in Table 33 to 50 CFR part 679 and § 679.91. One Amendment 80 cooperative has formed for the 2021 fishing year. Because all Amendment 80 vessels are part of the cooperative, no allocation to the Amendment 80 limited access sector is required for 2021. The 2022 allocations for Pacific cod between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2021. NMFS will post the 2022 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska> prior to the start of the fishing year on January 1, 2022, based on the harvest specifications effective on that date.

The sector allocations of Pacific cod are apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7)(i)(B), 679.20 (a)(7)(iv)(A),

and 679.23(e)(5)). In accordance with §§ 679.20(a)(7)(iv)(B) and (C), any unused portion of a Pacific cod seasonal allowance for any sector, except the jig sector, will become available at the beginning of that sector's next seasonal allowance.

Section 679.20(a)(7)(vii) requires that the Regional Administrator establish an Area 543 Pacific cod harvest limit based on Pacific cod abundance in Area 543 as determined by the annual stock assessment process. Based on the 2019 stock assessment, the Regional Administrator has preliminarily determined for 2021 and 2022 that the estimated amount of Pacific cod abundance in Area 543 is 15.7 percent of total AI abundance. NMFS will first subtract the State GHL Pacific cod amount from the AI Pacific cod ABC. Then NMFS will determine the harvest limit in Area 543 by multiplying the percentage of Pacific cod estimated in Area 543 (15.7 percent) by the remaining ABC for AI Pacific cod. Based on these calculations, which rely on the 2019 stock assessment, the proposed

Area 543 harvest limit is 2,166 mt. However, the final Area 543 harvest limit could change if the Pacific cod abundance in Area 543 changes based on the stock assessment in the final 2020 SAFE report.

On March 21, 2019, the final rule adopting Amendment 113 to the FMP (81 FR 84434; November 23, 2016) was vacated by the U.S. District Court for the District of Columbia (*Groundfish Forum v. Ross*, No. 16–2495 (D.D.C. March 21, 2019)), and the corresponding regulations implementing Amendment 113 are no longer in effect. Therefore, this proposed rule is not specifying amounts for the AI Pacific Cod Catcher Vessel Harvest Set-Aside Program (see § 679.20(a)(7)(viii)).

Table 4 lists the CDQ and non-CDQ seasonal allowances by gear based on the proposed 2021 and 2022 Pacific cod TACs; the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and (a)(7)(iv)(A); and the seasons set forth at § 679.23(e)(5).

TABLE 4—PROPOSED 2021 AND 2022 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI¹ PACIFIC COD TAC

[Amounts are in metric tons]

Sector	Percent	2021 and 2022 share of gear sector total	2021 and 2022 share of sector total	2021 and 2022 seasonal apportionment	
				Season	Amount
Total Bering Sea TAC	n/a	92,633	n/a	n/a	n/a
Bering Sea CDQ	n/a	9,912	n/a	See § 679.20(a)(7)(i)(B)	n/a
Bering Sea non-CDQ TAC	n/a	82,721	n/a	n/a	n/a
Total Aleutian Islands TAC	n/a	13,796	n/a	n/a	n/a
Aleutian Islands CDQ	n/a	1,476	n/a	See § 679.20(a)(7)(i)(B)	n/a
Aleutian Islands non-CDQ TAC	n/a	12,320	n/a	n/a	n/a
Western Aleutians Islands Limit	n/a	2,166	n/a	n/a	n/a
Total BSAI non-CDQ TAC ¹	100	95,041	n/a	n/a	n/a
Total hook-and-line/pot gear	61	57,785	n/a	n/a	n/a
Hook-and-line/pot ICA ²	n/a	n/a	400	n/a	n/a
Hook-and-line/pot sub-total	n/a	57,385	n/a	n/a	n/a
Hook-and-line catcher/processors	49	n/a	45,965	Jan 1–Jun 10	23,442
				Jun 10–Dec 31	22,523
Hook-and-line catcher vessels ≥60 ft LOA.	0	n/a	189	Jan 1–Jun 10	96
				Jun 10–Dec 31	92
Pot catcher/processors	2	n/a	1,416	Jan 1–Jun 10	722
				Sept 1–Dec 31	694
Pot catcher vessels ≥60 ft LOA	8	n/a	7,928	Jan 1–Jun 10	4,043
				Sept 1–Dec 31	3,885
Catcher vessels <60 ft LOA using hook-and-line or pot gear.	2	n/a	1,888	n/a	n/a
Trawl catcher vessels	22	21,004	n/a	Jan 20–Apr 1	15,543
				Apr 1–Jun 10	2,310
				Jun 10–Nov 1	3,151
AFA trawl catcher/processors	2	2,186	n/a	Jan 20–Apr 1	1,639
				Apr 1–Jun 10	546
				Jun 10–Nov 1	
Amendment 80	13	12,736	n/a	Jan 20–Apr 1	9,552
				Apr 1–Jun 10	3,184
				Jun 10–Dec 31	

TABLE 4—PROPOSED 2021 AND 2022 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI¹ PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Sector	Percent	2021 and 2022 share of gear sector total	2021 and 2022 share of sector total	2021 and 2022 seasonal apportionment	
				Season	Amount
Jig	1	1,331	n/a	Jan 1–Apr 30	798
				Apr 30–Aug 31	266
				Aug 31–Dec 31	266

¹ The non-CDQ sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod non-CDQ TACs, after subtraction of the reserve for the CDQ Program. If the non-CDQ TAC for Pacific cod in either the AI or BS is reached, then directed fishing for the non-CDQ sectors will be prohibited for Pacific cod in that subarea, even if a BSAI allowance remains.

² The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 400 mt for 2021 and 2022 based on anticipated incidental catch in these fisheries.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require allocation of sablefish TAC for the BS and AI between trawl gear and hook-and-line or pot gear. Gear allocations of the sablefish TAC for the BS are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations of the TAC for the AI are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires that NMFS apportion 20 percent of the hook-

and-line or pot gear allocation of sablefish TAC to the CDQ reserve for each subarea. Also, § 679.20(b)(1)(ii)(D)(1) requires that 7.5 percent of the trawl gear allocation of sablefish TAC from the non-specified reserve, established under § 679.20(b)(1)(i), be apportioned to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line or pot gear sablefish Individual Fishing Quota (IFQ) fisheries are limited

to the 2021 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2021 and 2022 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5—PROPOSED 2021 AND 2022 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2021 Share of TAC	2021 ITAC ¹	2021 CDQ reserve	2022 Share of TAC	2022 ITAC	2022 CDQ reserve
Bering Sea:							
Trawl	50	1,433	1,218	107	1,433	1,218	107
Hook-and-line gear/pot ²	50	1,433	n/a	287	n/a	n/a	n/a
Total	100	2,865	1,218	394	1,433	1,218	107
Aleutian Islands:							
Trawl	25	625	531	47	625	531	47
Hook-and-line gear/pot ²	75	1,875	n/a	375	n/a	n/a	n/a
Total	100	2,500	531	422	625	531	47

¹ For the sablefish TAC allocated to vessels using trawl gear, 15 percent of TAC is apportioned to the non-specified reserve (§ 679.20(b)(1)(i)). The ITAC is the remainder of the TAC after subtracting these reserves. In the BS and AI, 7.5 percent of the trawl non-specified reserve is assigned to the CDQ reserves (§ 679.20(b)(1)(ii)(D)(1)).

² For the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants (§ 679.20(b)(1)(ii)(B)). The Council recommended that specifications for the hook-and-line and pot gear sablefish IFQ fisheries be limited to one year.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs between the Amendment 80 sector and the BSAI trawl limited access sector, after subtracting 10.7 percent for the

CDQ reserves and amounts for ICAs for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to 50 CFR part 679 and in § 679.91.

One Amendment 80 cooperative has formed for the 2021 fishing year. Because all Amendment 80 vessels are part of the cooperative, no allocation to the Amendment 80 limited access sector is required for 2021. The 2022 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible

participants apply for participation in the program by November 1, 2021. NMFS will post the 2022 Amendment 80 cooperatives and Amendment 80 limited access sector allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska> prior to the start of the fishing year on January 1, 2022, based on the harvest specifications effective on that date. Section 679.91(i)(2) establishes each Amendment 80 cooperative ABC reserve to be the ratio of each cooperatives' quota share units and the total Amendment 80 quota

share units, multiplied by the Amendment 80 ABC reserve for each respective species. Table 6 lists the proposed 2021 and 2022 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6—PROPOSED 2021 AND 2022 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAs), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACs

[Amounts are in metric tons]

Sector	2021 and 2022 allocations					
	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District			
				BSAI	BSAI	BSAI
TAC	10,619	7,817	10,000	24,000	49,000	168,900
CDQ	1,136	836	1,070	2,568	5,243	18,072
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	938	692	178	.....	.....	23,673
Amendment 80	8,444	6,229	8,742	18,432	37,757	123,154

Section 679.2 defines the ABC surplus for flathead sole, rock sole, and yellowfin sole as the difference between the annual ABC and TAC for each species. Section 679.20(b)(1)(iii) establishes ABC reserves for flathead sole, rock sole, and yellowfin sole. The ABC surpluses and the ABC reserves are necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and the Amendment 80

cooperatives from achieving, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. NMFS, after consultation with the Council, may set the ABC reserve at or below the ABC surplus for each species, thus maintaining the TAC below ABC limits. An amount equal to 10.7 percent of the ABC reserves will be allocated as CDQ ABC reserves for flathead sole, rock sole, and yellowfin sole. Section 679.31(b)(4) establishes the annual

allocations of CDQ ABC reserves among the CDQ groups. The Amendment 80 ABC reserves are the ABC reserves minus the CDQ ABC reserves and are allocated to each Amendment 80 cooperative pursuant to § 679.91(i)(2). Table 7 lists the proposed 2021 and 2022 ABC surplus and ABC reserves for BSAI flathead sole, rock sole, and yellowfin sole.

TABLE 7—PROPOSED 2021 AND 2022 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	Flathead sole	Rock sole	Yellowfin sole
ABC	71,079	245,400	261,497
TAC	24,000	49,000	168,900
ABC surplus	47,079	196,400	92,597
ABC reserve	47,079	196,400	92,597
CDQ ABC reserve	5,037	21,015	9,908
Amendment 80 ABC reserve	42,042	175,385	82,689

Proposed PSC Limits for Halibut, Salmon, Crab, and Herring

Sections 679.21(b), (e), (f), and (g) set forth the BSAI PSC limits. Pursuant to § 679.21(b)(1), the annual BSAI halibut PSC limits total 3,515 mt. Section 679.21(b)(1) allocates 315 mt of the halibut PSC limit as the PSQ reserve for use by the groundfish CDQ Program, 1,745 mt of the halibut PSC limit for the Amendment 80 sector, 745 mt of the halibut PSC limit for the BSAI trawl limited access sector, and 710 mt of the

halibut PSC limit for the BSAI non-trawl sector.

Sections 679.21(b)(1)(iii)(A) and (B) authorize apportionment of the BSAI non-trawl halibut PSC limit into PSC allowances among six fishery categories, and §§ 679.21(b)(1)(ii)(A) and (B), (e)(3)(i)(B), and (e)(3)(iv) require apportionment of the BSAI trawl limited access sector's halibut and crab PSC limits into PSC allowances among seven fishery categories. Table 10 lists the proposed fishery PSC allowances for the BSAI trawl limited access sector

fisheries, and Table 11 lists the proposed fishery PSC allowances for the non-trawl fisheries.

Pursuant to Section 3.6 of the FMP, the Council recommends, and NMFS proposes, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years, after consultation with the Council, NMFS proposes to exempt the pot gear fishery, the jig gear fishery, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions for the following reasons: (1)

The pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ Program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)).

As of October 15, 2020, total groundfish catch for the pot gear fishery in the BSAI was 19,733 mt, with an associated halibut bycatch mortality of 5 mt. The 2020 jig gear fishery harvested about 10 mt of groundfish. Most vessels in the jig gear fleet are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. As mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Under § 679.21(f)(2), NMFS annually allocates portions of either 33,318, 45,000, 47,591, or 60,000 Chinook salmon PSC limits among the AFA sectors, depending on past bycatch performance, on whether Chinook salmon bycatch incentive plan agreements (IPAs) are formed, and on whether NMFS determines it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. The State provides to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska, based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), and if it is not a low Chinook salmon abundance year, then NMFS will allocate a portion of the 60,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if it is not a low abundance year, then NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(C). If an AFA sector participates in an approved IPA and has not exceeded its

performance standard under § 679.21(f)(6) in a low abundance year, then NMFS will allocate a portion of the 45,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if in a low abundance year, then NMFS will allocate a portion of the 33,318 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(D).

NMFS has determined that 2020 was a low Chinook salmon abundance year, based on the State's estimate that Chinook salmon abundance in western Alaska is less than 250,000 Chinook salmon. Therefore, in 2021, the Chinook salmon PSC limit is 45,000 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(B). The AFA sector Chinook salmon allocations are also seasonally apportioned with 70 percent of the allocation for the A season pollock fishery, and 30 percent of the allocation for the B season pollock fishery (§§ 679.21(f)(3)(i) and 679.23(e)(2)). In 2021, the Chinook salmon bycatch performance standard under § 679.21(f)(6) is 33,318 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(D). NMFS publishes the approved IPAs, allocations, and reports at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska>.

Section 679.21(g)(2)(i) specifies 700 fish as the 2021 and 2022 Chinook salmon PSC limit for the AI pollock fishery. Section 679.21(g)(2)(ii) allocates 7.5 percent, or 53 Chinook salmon, as the AI PSQ reserve for the CDQ Program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(f)(14)(i) specifies 42,000 fish as the 2021 and 2022 non-Chinook salmon PSC limit for vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area (CVOA). Section 679.21(f)(14)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, in the CVOA as the PSQ reserve for the CDQ Program, and allocates the remaining 37,506 non-Chinook salmon in the CVOA to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2020 regarding herring PSC limits and apportionments, the Council recommended, and NMFS proposes, basing the herring 2021 and 2022 PSC limits and apportionments on the 2019 survey data. The Council will

reconsider these amounts in December 2020. Section 679.21(e)(3)(i)(A)(1) allocates 10.7 percent of each trawl gear PSC limit specified for crab as a PSQ reserve for use by the groundfish CDQ Program.

Based on the most recent (2019) survey data, the red king crab mature female abundance is estimated at 9.668 million red king crabs, and the effective spawning biomass is estimated at 25.120 million lbs (11,394 mt). Based on the criteria set out at § 679.21(e)(1)(i), the proposed 2021 and 2022 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance estimate of more than 8.4 million red king crab and the effective spawning biomass estimate of more than 14.5 million lbs (6,577 mt) but less than 55 million lbs (24,948 mt).

Section 679.21(e)(3)(ii)(B)(2) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS) if the State has established a GHL fishery for red king crab in the Bristol Bay area in the previous year. The regulations limit the bycatch in the RKCSS to up to 25 percent of the red king crab PSC allowance, based on the need to optimize the groundfish harvest relative to red king crab bycatch. NMFS proposes the Council's recommendation that the red king crab bycatch limit within the RKCSS for 2021 and 2022 be equal to 25 percent of the red king crab PSC allowance (Table 9).

Based on the most recent (2019) survey data from the NMFS annual bottom trawl survey, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 541 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2021 and 2022 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1, and 2,970,000 animals in Zone 2. The limit in Zone 1 is based on the abundance of *C. bairdi* (estimated at 541 million animals), which is greater than 400 million animals. The limit in Zone 2 is based on the abundance of *C. bairdi* (estimated at 541 million animals), which is greater than 400 million animals.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for trawl gear for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit in the *C. opilio* bycatch limitation zone (COBLZ) is set at 0.1133 percent of the Bering Sea abundance index minus 150,000 crabs. Based on the most recent (2019) survey estimate of 11.57 billion animals, the calculated *C. opilio* crab

PSC limit is 13,108,810 animals. If the total abundance times 0.1133 percent is greater than 13 million, then the maximum PSC is set at 12.850 million animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2021 and 2022 herring biomass is 253,207 mt. This amount was developed by the Alaska Department of Fish and Game based on biomass for spawning aggregations. Therefore, the herring PSC limit proposed for 2021 and 2022 is 2,532 mt for all trawl gear as listed in Tables 8 and 9.

Section 679.21(e)(3)(i)(A) requires that PSQ reserves be subtracted from the total trawl PSC limits. The 2021 crab and halibut PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are listed in Table 35 to 50 CFR part 679. The resulting proposed allocations of crab and halibut PSC limits to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in Table 8.

Pursuant to §§ 679.21(b)(1)(i), 679.21(e)(3)(vi), and 679.91(d) through (f), crab and halibut trawl PSC limits

assigned to the Amendment 80 sector are then further allocated to Amendment 80 cooperatives as cooperative quotas. Crab and halibut PSC cooperative quotas assigned to Amendment 80 cooperatives are not allocated to specific fishery categories.

One Amendment 80 cooperative has formed for the 2021 fishing year. Because all Amendment 80 vessels are part of the cooperative, no PSC limit allocation to the Amendment 80 limited access sector is required for 2021. The 2022 PSC limit allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2021. NMFS will post the 2022 Amendment 80 cooperatives and Amendment 80 limited access sector allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska> prior to the start of the fishing year on January 1, 2022, based on the harvest specifications effective on that date.

Sections 679.21(b)(2) and (e)(5) authorize NMFS, after consulting with the Council, to establish seasonal

apportionments of halibut and crab PSC amounts for the BSAI non-trawl, BSAI trawl limited access, and Amendment 80 limited access sectors to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors considered are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species relative to prohibited species distribution, (3) prohibited species bycatch needs on a seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species, (4) expected variations in bycatch rates throughout the year, (5) expected changes in directed groundfish fishing seasons, (6) expected start of fishing effort, and (7) economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry. Based on this criteria, the Council recommended, and NMFS proposes, the seasonal PSC apportionments in Tables 10 and 11 to maximize harvest among gear types, fisheries, and seasons, while minimizing bycatch of PSC.

TABLE 8—PROPOSED 2021 AND 2022 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species and area ¹	Total PSC	Non-trawl PSC	CDQ PSQ reserve ²	Trawl PSC remaining after CDQ PSQ	Amendment 80 sector ³	BSAI trawl limited access sector	BSAI PSC limits not allocated ²
Halibut mortality (mt)							
BSAI	3,515	710	315	n/a	1,745	745	n/a
Herring (mt) BSAI	2,532	n/a	n/a	n/a	n/a	n/a	n/a
Red king crab (animals)							
Zone 1	97,000	n/a	10,379	86,621	43,293	26,489	16,839
<i>C. opilio</i> (animals)							
COBLZ	12,850,000	n/a	1,374,950	11,475,050	5,639,987	3,688,081	2,146,982
<i>C. bairdi</i> crab (animals)							
Zone 1	980,000	n/a	104,860	875,140	368,521	411,228	95,390
<i>C. bairdi</i> crab (animals)							
Zone 2	2,970,000	n/a	317,790	2,652,210	627,778	1,241,500	782,932

¹ Refer to § 679.2 for definitions of areas and zones.

² The CDQ PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

³ The Amendment 80 program reduced apportionment of the trawl PSC limits for crab below the total PSC limit. These reductions are not apportioned to other gear types or sectors.

TABLE 9—PROPOSED 2021 AND 2022 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	110	n/a
Rock sole/flathead sole/Alaska plaice/other flatfish ¹	54	n/a
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish	7	n/a
Rockfish	7	n/a
Pacific cod	13	n/a
Midwater trawl pollock	2,299	n/a
Pollock/Atka mackerel/other species ^{2 3}	42	n/a
Red king crab savings subarea non-pelagic trawl gear ⁴	n/a	24,250

TABLE 9—PROPOSED 2021 AND 2022 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS—Continued

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Total trawl PSC	2,532	97,000

¹ “Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

² Pollock other than midwater trawl pollock, Atka mackerel, and “other species” fishery category.

³ Other species” for PSC monitoring includes skates, sharks, and octopuses.

⁴ In October 2020, the Council recommended and NMFS proposes that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

Note: Species apportionments may not total precisely due to rounding.

TABLE 10—PROPOSED 2021 AND 2022 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

BSAI trawl limited access sector fisheries	Prohibited species and area ¹				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	<i>C. opilio</i> (animals) COBLZ	<i>C. bairdi</i> (animals)	
				Zone 1	Zone 2
Yellowfin sole	150	23,338	3,476,708	346,228	1,185,500
Rock sole/flathead sole/other flatfish ² .....	.....	.....	.....	.....	.....
Greenland turbot/arrowtooth flounder/Kamchatka flounder/ sablefish .....	.....	.....	.....	.....	.....
Rockfish April 15–December 31	4	.....	5,743	.....	1,000
Pacific cod	391	2,954	148,192	60,000	49,999
Pollock/Atka mackerel/other species ³	200	197	57,438	5,000	5,000
Total BSAI trawl limited access sector PSC	745	26,489	3,688,081	411,228	1,241,500

¹ Refer to § 679.2 for definitions of areas and zones.

² “Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

³ “Other species” for PSC monitoring includes skates, sharks, and octopuses.

Note: Species apportionments may not total precisely due to rounding.

TABLE 11—PROPOSED 2021 AND 2022 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

Halibut mortality (mt) BSAI				
Non-trawl fisheries	Seasons	Catcher/ processor	Catcher vessel	All Non-Trawl
Pacific cod	Annual Pacific cod	648	13	661
	January 1–June 10	388	9	n/a
	June 10–August 15	162	2	n/a
	August 15–December 31	98	2	n/a
Non-Pacific cod non-trawl—Total	May 1–December 31	n/a	n/a	49
Groundfish pot and jig	n/a	n/a	n/a	Exempt
Sablefish hook-and-line	n/a	n/a	n/a	Exempt
Total for all non-trawl PSC	n/a	n/a	n/a	710

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observers’ estimates of halibut incidental catch in the groundfish

fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to

the annual BSAI groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council’s directive. An interagency halibut working group (International Pacific Halibut Commission, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, SSC, and the Council. A summary of the revised methodology is included in the BSAI proposed 2017 and 2018 harvest specifications (81 FR 87863; December

6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). Future DMRs may change based on additional years of observer sampling,

which could provide more recent and accurate data and which could improve the accuracy of estimation and progress on methodology. The methodology will continue to ensure that NMFS is using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

In October 2020, the Council recommended halibut DMRs derived from the revised methodology for the proposed 2021 and 2022 DMRs. The proposed 2021 and 2022 DMRs use an

updated 2-year reference period. Comparing the proposed 2021 and 2022 DMRs to the final DMRs from the 2020 and 2021 harvest specifications, the DMR for motherships and CPs using non-pelagic trawl gear increased to 84 percent from 75 percent, the DMR for CVs using non-pelagic trawl gear increased to 59 percent from 58 percent, the DMR for CPs using hook-and-line gear remained at 9 percent, the DMR for CVs using hook-and-line gear remained at 9 percent, and the DMR for pot gear increased to 32 percent from 27 percent. Table 12 lists the proposed 2021 and 2022 DMRs.

TABLE 12—PROPOSED 2021 AND 2022 PACIFIC HALIBUT DISCARD MORTALITY RATES (DMR) FOR THE BSAI

Gear	Sector	Halibut discard mortality rate (percent)
Pelagic trawl	All	100
Non-pelagic trawl	Mothership and catcher/processor	84
Non-pelagic trawl	Catcher vessel	59
Hook-and-line	Catcher vessel	9
Hook-and-line	Catcher/processor	9
Pot	All	32

Listed AFA C/P Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA CPs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA fishery and from fishery cooperatives in the directed pollock fishery. These restrictions are set out as sideboard limits on catch. On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA CPs from directed fishing for groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and Table 54 to 50

CFR part 679). NMFS proposes to exempt AFA CPs from a yellowfin sole sideboard limit pursuant to § 679.64(a)(1)(v) because the proposed 2021 and 2022 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Section 679.64(a)(2) and Tables 40 and 41 to 50 CFR part 679 establish a formula for calculating PSC sideboard limits for halibut and crab caught by listed AFA CPs. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692; December 30, 2002) and Amendment 80 (72 FR 52668; September 14, 2007). PSC species listed in Table 13 that are caught

by listed AFA CPs participating in any groundfish fishery other than pollock will accrue against the proposed 2021 and 2022 PSC sideboard limits for the listed AFA CPs. Sections 679.21(b)(4)(iii), (e)(3)(v), and (e)(7) authorize NMFS to close directed fishing for groundfish other than pollock for listed AFA CPs once a proposed 2021 or 2022 PSC sideboard limit listed in Table 13 is reached. Pursuant to §§ 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by listed AFA CPs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/"other species" fishery categories, according to §§ 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 13—PROPOSED 2021 AND 2022 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

PSC species and area ¹	Ratio of PSC to total PSC	Proposed 2021 and 2022 PSC available to trawl vessels after subtraction of PSQ ²	Proposed 2021 and 2022 CP sideboard limit ²
BSAI Halibut mortality	n/a	n/a	286
Red king crab Zone 1	0.007	86,621	606
<i>C. opilio</i> (COBLZ)	0.153	11,475,050	1,755,683
<i>C. bairdi</i> Zone 1	0.140	875,140	122,520
<i>C. bairdi</i> Zone 2	0.050	2,652,210	132,611

¹ Refer to § 679.2 for definitions of areas and zones.

² Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA CV Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA CVs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the pollock directed fishery. On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit

non-exempt AFA CVs from directed fishing for a majority of the groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and Table 55 to 50 CFR part 679). The remainder of the sideboard limits for non-exempt AFA CVs are proposed in Table 14.

Sections 679.64(b)(3) and (b)(4) establish formulas for setting AFA CV groundfish and halibut and crab PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing

the major provisions of the AFA (67 FR 79692; December 30, 2002) and Amendment 80 (72 FR 52668; September 14, 2007). NMFS proposes to exempt AFA CVs from a yellowfin sole sideboard limit pursuant to § 679.64(b)(6) because the proposed 2021 and 2022 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt. Table 14 lists the proposed 2021 and 2022 AFA CV sideboard limits.

TABLE 14—PROPOSED 2021 AND 2022 BSAI PACIFIC COD SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVs)

[Amounts are in metric tons]

Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2021 and 2022 initial TAC	2021 and 2022 AFA catcher vessel sideboard limits
BSAI	n/a	n/a	n/a
Trawl gear CV	n/a	n/a	n/a
Jan 20–Apr 1	0.8609	15,543	13,381
Apr 1–Jun 10	0.8609	2,310	1,989
Jun 10–Nov 1	0.8609	3,151	2,713

Note: As proposed, § 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2021 and 2022 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Halibut and crab PSC limits listed in Table 15 that are caught by AFA CVs participating in any groundfish fishery other than pollock will accrue against the 2021 and 2022 PSC sideboard limits for the AFA CVs. Sections 679.21(b)(4)(iii), (e)(3)(v), and (e)(7)

authorize NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a proposed 2021 and 2022 PSC sideboard limit listed in Table 15 is reached. Pursuant to §§ 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by AFA CVs while

fishing for pollock in the BS will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/“other species” fishery categories under §§ 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 15—PROPOSED 2021 AND 2022 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI ¹

PSC species and area ¹	Target fishery category ²	AFA catcher vessel PSC sideboard limit ratio	Proposed 2021 and 2022 PSC limit after subtraction of PSQ reserves ³	Proposed 2021 and 2022 AFA catcher vessel PSC sideboard limit ³
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/Alaska plaice/other flatfish ⁴	n/a	n/a	228
	Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish	n/a	n/a	
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species ⁵	n/a	n/a	5
Red king crab Zone 1	n/a	0.2990	86,621	25,900
<i>C. opilio</i> COBLZ	n/a	0.1680	11,475,050	1,927,808
<i>C. bairdi</i> Zone 1	n/a	0.3300	875,140	288,796
<i>C. bairdi</i> Zone 2	n/a	0.1860	2,652,210	493,311

¹ Refer to § 679.2 for definitions of areas and zones.

² Target fishery categories are defined at § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

³ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

⁴ “Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

⁵ “Other species” for PSC monitoring includes skates, sharks, and octopuses.

Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws, subject to further review after public comment.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the Final EIS. A SIR is being prepared for the final 2021 and 2022 harvest specifications to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (40 CFR 1501.11(b); 1502.9(d)(1)). Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the proposed groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the estimated number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant

economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained earlier in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$11 million for all its affiliated operations worldwide. A shoreside processor primarily involved in seafood processing (NAICS code 311710) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

The entities directly regulated by the groundfish harvest specifications include: (a) Entities operating vessels with groundfish Federal fisheries permits (FFPs) catching FMP groundfish in Federal waters (including those receiving direction allocations of groundfish); (b) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the state-waters parallel fisheries; and (c) all entities operating vessels fishing for halibut inside three miles of the shore (whether or not they have FFPs).

In 2019 (the most recent year of complete data), there were 661 individual CVs and CPs with gross revenues less than or equal to \$11 million as well as six CDQ groups. This estimate does not account for corporate affiliations among vessels, and for cooperative affiliations among fishing entities, since some of the fishing vessels operating in the BSAI are members of AFA inshore pollock cooperatives, Gulf of Alaska Rockfish Program cooperatives, or BSAI Crab Rationalization Program cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA because the aggregate gross receipts of all participating members exceed the \$11 million threshold. After accounting

for membership in these cooperatives, there are an estimated 605 small CV and 56 small CP entities remaining in the BSAI groundfish sector. However, the estimate of these 605 CVs may be an overstatement of the number of small entities. This latter group of vessels had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, trawl gear CVs, hook-and-line CPs, and pot gear CPs are estimated to be \$500,000, \$1.4 million, \$2.9 million, \$7.0 million, and \$3.5 million, respectively.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The action under consideration is the proposed 2021 and 2022 harvest specifications, apportionments, and prohibited species catch limits for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits for groundfish during the 2021 and 2022 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the proposed harvest specifications is governed by the Council's harvest strategy to govern the catch of groundfish in the BSAI. This strategy was selected from among five alternatives, with the preferred alternative harvest strategy being one in which the TACs fall within the range of ABCs recommended by the SSC. Under the preferred harvest strategy, TACs are set to a level that falls within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The TACs associated with preferred harvest strategy are those recommended by the Council in October 2020. OFLs and ABCs for the species were based on recommendations prepared by the Council's Plan Team in September 2020, and reviewed by the Council's SSC in October 2020. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC's OFL and ABC recommendations. The sum of all TACs remains within the OY for the BSAI consistent with § 679.20(a)(1)(i)(A). Because setting all TACs equal to ABCs would cause the sum of TACs to exceed an OY of 2 million mt, TACs for some species or species groups are lower than the ABCs recommended by the Plan Team and the SSC.

The proposed 2021 and 2022 OFLs and ABCs are based on the best

available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The proposed 2021 and 2022 TACs are based on the best available biological and socioeconomic information. The proposed 2021 and 2022 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2019 SAFE report, which is the most recent, completed SAFE report.

Under this action, the proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. The proposed TACs are within the range of proposed ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and overfishing levels). For some species and species groups in the BSAI, the Council recommended, and NMFS proposes, proposed TACs equal to proposed ABCs, which is intended to maximize harvest opportunities in the BSAI. However, NMFS cannot set TACs for all species in the BSAI equal to their ABCs due to the constraining OY limit of two million mt. For this reason, some proposed TACs are less than the

proposed ABCs. The specific reductions are reviewed and recommended by the Council's AP, and the Council in turn adopted the AP's TAC recommendations for the proposed 2021 and 2022 TACs.

Based upon the best available scientific data, and in consideration of the Council's objectives of this action, it appears that there are no significant alternatives to the proposed rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. This action is economically beneficial to entities operating in the BSAI, including small entities. The action proposes TACs for commercially-valuable species in the BSAI and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process, during which the Council solicited input from stakeholders, the Council concluded that the proposed harvest specifications would best accomplish the stated objectives articulated in the preamble for this proposed rule, and in applicable

statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Adverse impacts on marine mammals or endangered or threatened species resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105-277; Pub. L. 106-31; Pub. L. 106-554; Pub. L. 108-199; Pub. L. 108-447; Pub. L. 109-241; Pub. L. 109-479.

Dated: November 25, 2020.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2020-26598 Filed 12-1-20; 8:45 am]

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Notices

Federal Register

Vol. 85, No. 233

Thursday, December 3, 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

Submission for OMB Review; Comment Request

November 30, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information 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.

Comments regarding this information collection received by January 4, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Farm Service Agency

Title: Certified Mediation Program (7 CFR part 785).

OMB Control Number: 0560–0165.

Summary of Collection: The Farm Service (FSA) is administering the Certified Mediation Program as mandated by Subtitle A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100–233), as amended, under the USDA Agricultural Mediation Program. USDA authorized FSA to administer the program. FSA makes grants to state-designated entities that provide mediation to agricultural producers, their lenders and others that are directly affected by the action of certain USDA agencies. In mediation, a trained impartial mediator helps participants review and discuss their conflicts, identify options to resolve disputes and agree on solutions.

Need and Use of the Information: FSA will collect information to determine whether the participants meet the eligibility requirements to be recipients of grant funds, and secondly, to determine if the grant is being administered as provided by the Act. Lack of adequate information to make these determinations could result in the improper administration and appropriation of Federal grant funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 42.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,772.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–26615 Filed 12–2–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0103]

Notice of Request for Extension of Approval of an Information Collection; Commercial Transportation of Equines for Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the commercial transportation of equines to slaughtering facilities.

DATES: We will consider all comments that we receive on or before February 1, 2021.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0103>.

- *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS–2020-0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0103> or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the commercial transportation of equines for slaughter, contact Dr. Rory Carolan, Equine Specialist, Surveillance, Preparedness, and Response Services, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 851–3558. For copies of more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Commercial Transportation of Equines for Slaughter.

OMB Control Number: 0579–0332.

Type of Request: Extension of approval of an information collection.

Abstract: Sections 901–905 of the Federal Agriculture Improvement and

Reform Act of 1996 (7 U.S.C. 1901) authorize the Secretary of Agriculture to issue guidelines for regulating the commercial transportation of equines to slaughter by persons regularly engaged in that activity within the United States. Specifically, the Secretary is authorized to regulate the food, water, and rest provided to these equines while the equines are in transit and to review related issues appropriate to ensuring that these animals are treated humanely.

To implement the provisions of this Act, the Animal and Plant Health Inspection Service (APHIS) established minimum standards to ensure the humane movement of equines to slaughtering facilities, or to assembly points while en route to slaughtering facilities, via commercial transportation. These standards, contained in 9 CFR part 88, require that conveyances protect the health and well-being of the animals and meet certain other criteria; that double-deck conveyances are prohibited; and that access to food, water, and rest be provided to these animals 6 hours prior to shipment. APHIS' regulations also require the application of backtags and completion of owner/shipper certificates of fitness to travel to a slaughter facility with identification of the animals and details of the transportation and signatures attesting to compliance with the provision of food, rest, and water and to the animal's fitness to travel. The regulations further prohibit the use of electric prods and state aggressive animals must be separated. Any owner/shipper transporting equines to slaughtering facilities outside the United States must present the owner-shipper certificates to U.S. Department of Agriculture representatives at the border.

Implementing these regulations entails the use of information collection activities such as providing business information; completing owner/shipper certificates of fitness to travel to a slaughter facility; applying backtags, as needed; certificates of veterinary inspection; and maintaining records of the owner/shipper certificates and continuation sheets.

APHIS is asking the Office of Management and Budget (OMB) to approve these information collection activities for an additional 3 years. The activities described are associated with APHIS' efforts to ensure that equines being transported commercially for slaughter receive adequate food, water, and rest and that their health and well-being are protected.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our

information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.465 hours per response.

Respondents: Owners and shippers of slaughter horses, owners or operators of slaughtering facilities, and drivers of the transport vehicles.

Estimated annual number of respondents: 302.

Estimated annual number of responses per respondent: 61.

Estimated annual number of responses: 18,500.

Estimated total annual burden on respondents: 8,608 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of November 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020-26611 Filed 12-2-20; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Virtual Public Listening Session; Natural Resources Conservation Service Programs and Western Water Quantity

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice.

SUMMARY: The Natural Resources Conservation Service (NRCS) will host a virtual, open, public listening session with remote participation only, for

public input about water quantity in the west as it relates to existing NRCS programs. There will not be any in-person gathering for this listening session.

DATES:

Listening Session: The virtual public listening session will be held on Thursday, December 17, 2020 (also see below for Meeting Times section below).

Registration to comment date: To provide oral comments during the virtual listening session, you must register by 12:00 p.m. (noon) on Tuesday, December 18, 2020.

Registration to view date: You may register to view the listening session (but not provide oral comments), by 12:00 p.m. (noon) on Tuesday, December 15, 2020.

Written comment date: You may submit written comments by January 19, 2021.

ADDRESSES:

Registration: To register and receive information on how to attend the virtual listening session, please email your information to WesternWater@usda.gov—send your first and last name, organization, job title, City, State, email, and phone number.

Written comments: We invite you to submit written comments by any of the following methods:

- **Mail:** Deborah Miles, NRCS, ATTN: Western Water Quantity Listening Session, 1400 Independence Ave. SW, Room 5739, Mail Stop 1600, Washington, DC 20250, or
- **Email:** WesternWater@usda.gov.

FOR FURTHER INFORMATION CONTACT: For further information about providing written comments, joining the virtual listening session, or registering to speak at the virtual listening session, contact Leslie Deavers, telephone: 202-690-4616, or by email: Leslie.Deavers@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2020, NRCS announced it had selected 31 priority areas to receive \$13 million in Environmental Quality Incentives Program (EQIP) funding as part of the WaterSMART Initiative (WSI). These investments will help producers on private working lands better conserve water resources in coordination with investments made by water suppliers.

The Natural Resources Conservation Service (NRCS) will host a virtual, open, public listening session with remote

participation only, for public input about water quantity in the west as it relates to existing NRCS programs. (There will not be any in-person gathering for this listening session.) Stakeholders will have an opportunity to provide oral comments during the virtual public listening session.

Stakeholders must notify NRCS during registration of their wish to speak at the listening session. Stakeholders who do not notify NRCS during registration of their wish to speak will not have the opportunity to comment during the virtual listening session. Due to the anticipated high level of interest in the opportunity to make public comments and the limited time available to do so, NRCS will do its best to accommodate all persons who registered and requested to provide oral comments and will limit all speakers to 3 minutes. NRCS encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative.

The stakeholders may provide feedback on any of the following questions:

- For agricultural producers: What is your most pressing water related issue that may constrain or currently constrains your operations?
- For non-producers and organizations: What is your most pressing water related issue that is needed by the agricultural community you assist?
- For producers and organizations: What is your most pressing water related issue with which NRCS can help you through a technical or financial assistance program or through facilitating and engaging in a collaboration or partnership?
- How can NRCS best coordinate with other Federal, State, and Local efforts to address water related issues?
- How can State Technical Committees assist in addressing your most pressing water related issues?
- What additional issues do you confront that NRCS should have awareness of?

NRCS expects to obtain input about the challenges, needed breakthroughs, and priorities through the virtual listening session and through submission of written comments. NRCS will treat stakeholder input equally. NRCS will then evaluate the challenges, needed breakthroughs, and priorities identified by this effort and will consider this information in its evaluation of existing programs and efforts to position these programs to achieve positive outcomes.

Meeting Agenda

The listening session will begin with brief opening remarks, with an overview of NRCS efforts to address water related issues in the west, from USDA and NRCS leadership.

Individual speakers providing oral comments will be limited to 3 minutes each. However, if all speakers can be accommodated within time for the listening session, individual speaking times may be adjusted at the written request of the stakeholder (use the **FOR FURTHER INFORMATION CONTACT** information provided above in this notice). If, at 3 minutes each, the time allotted to registered speakers exceeds the available time for the listening session, a limited number of speakers will be selected on a first-come, first-serve basis.

If you are called upon during the listening session to provide oral comments and you or your representative are not available to speak, your opportunity to provide oral comments will pass to another speaker.

Meeting Times

The listening session will be held on Thursday, December 17, 2020, starting at 10:00 a.m. Eastern time. A mid-day break will be scheduled at approximately 12:00 p.m. (noon). The listening session will resume at 1:30 p.m. and continue to approximately 3:30 p.m.

NRCS may decide to extend the listening session to Friday, December 18, 2020. At the end of the listening session on Thursday, December 17, 2020, NRCS will announce whether an extension of the listening session will occur on Friday, December 18, 2020, or whether the listening session will conclude on Thursday, December 17, 2020. If the listening session is extended to Friday, December 18, 2020, the listening session will begin at 10:00 a.m. Eastern time and end at approximately 12:00 p.m. (noon). The listening session on Friday, December 18, 2020, may end earlier if there are no additional oral comments to be presented from anyone who registered to provide oral comments.

Oral and Written Comments

We request that speakers providing oral comments also provide a written copy of their comments. All written comments have the same due date, as specified above in this notice.

Registration Required To Attend

There is no registration fee for the public listening session, but pre-registration is mandatory for anyone who wishes to attend.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA will, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: https://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf or write a letter signed by you or your authorized representative.

You may also send your completed complaint form or letter to USDA by any of following methods: *Mail*: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410; *Fax*: (202) 690-7442; or *Email*: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication should contact USDA's TARGET Center at (202) 720-2600 (voice only).

Kevin D. Norton,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 2020-26525 Filed 12-2-20; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold a meeting on Friday, December 18, 2020, from 1:00–2:15 p.m. EST for the purpose of discussing the Committee's project on evictions in New York.

DATES: The meeting will be held on Friday, December 18, 2020, from 1:00–2:00 p.m. EST.

Public Call Information: Dial: (800) 367-2403; Conference ID: 7109728.

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, DFO, at mtrachtenberg@usccr.gov or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at mtrachtenberg@usccr.gov in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via <https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t00000001gzmAAAQ> under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

- I. Welcome and Roll Call
- II. Approval of Minutes from Last Meeting
- III. Discussion: Evictions in New York
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: November 30, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–26613 Filed 12–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**International Trade Administration****Decision on Application for Duty-Free Entry of Scientific Instruments; Rice University, et. al**

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On October 19, 2020, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. See *Application(s) for Duty-Free Entry of Scientific Instruments*, 85 FR 66305, October 19, 2020 (Notice). We received no public comments. Related records can be viewed through prior arrangement with Ms. Dianne Hanshaw at Dianne.Hanshaw@trade.gov.

Docket Number: 20–003. **Applicant:** Rice University, Department of Microengineering, 6100 Main Street, Houston, TX 77030. **Instrument:** Ultrasonic Linear Piezo Stage and controller. **Manufacturer:** Xeryon, Belgium. **Intended Use:** See Notice at 85 FR 66305, October 19, 2020. **Comments:** None received. **Decision:** Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. **Reasons:** According to the applicant, the instrument will be used to study automatic and large-scale surgical implantation of nanoelectrode threads into rodent and primate brains. Specifically, a platform is developed that can insert 8 ultraflexible nanoelectrode threads (uNETs) into the brain simultaneously and independently, while each insertion site is flexibly defined by the surgeons' and researchers' need and can be precisely researched by micromanipulators. Successful development of this technology will significantly reduce the time, errors and tissue trauma during brain surgery, meanwhile, it will open opportunities such as slow-speed

insertion, flexibly targeting multiple regions and large-scale neural recordings.

Docket Number: 20–004. **Applicant:** Texas A&M University, AgriLife Research, 2147 TAMU, College Station, TX 77843–2147A. **Instrument:** 3D Microfabrication System Photonic Professional GT. **Manufacturer:** Nanoscribe, Germany. **Intended Use:** See Notice at 85 FR 66305–06, October 19, 2020. **Comments:** None received. **Decision:** Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. **Reasons:** According to the applicant, the instrument will be used to conduct research in the broad areas of material research, thin-film metal semiconductors, bio-microfluidics, medical devices and optical/photonic devices, to name a few. These physical platforms will manifest in the forms of devices (ranging from 1–200 cm²) that will then be taken to individual laboratories for further experimentation in the aforementioned fields under the guidance and scope of the Texas A&M University research communities.

Docket Number: 20–005. **Applicant:** University of Chicago Argonne LLC, Operator of National Laboratory 9700 South Cass Avenue, Lemont, IL 60439–4873. **Instrument:** Libera Brilliance+ ¼ with GDX module BPM electronics. **Manufacturer:** Instrumentation Technologies D.D., Solvenia. **Intended Use:** See Notice at 85 FR 66305, October 19, 2020. **Comments:** None received. **Decision:** Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. **Reasons:** According to the applicant, the instrument will be used to study precision measurement for the particle beam position in the Advanced Photon Source Upgrade storage ring. The measurement information is used to steer the particle beam and photon beam that will be used as a three-dimensional X-ray microscope for experimental purposes. The materials/phenomena include material properties analysis, protein mapping for pharmaceutical companies, X-ray imaging and chemical composition determination and many others, but are not limited to grain structure, grain boundary and interstitial defects and morphology. These properties are not only studied at ambient environments, but also under

high pressure, temperature, stress and strain.

Docket Number: 20–006. **Applicant:** University of Chicago Argonne LLC, Operator of National Laboratory 9700 South Cass Avenue, Lemont, IL 60439–4873. **Instrument:** Canted Undulator GRID Masks. **Manufacturer:** Strumenti Scientific CINEL S.R.L., Italy. **Intended Use:** See Notice at 85 FR 66305, October 19, 2020. **Comments:** None received. **Decision:** Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. **Reasons:** According to the applicant, the instrument will be used to study and assemble the new canted undulator front ends for the Advanced Photon Source upgrade. The front end consists of a series of components that connect the storage ring to the user beamline in order to deliver a photon beam that will be used as a three-dimensional X-ray microscope for experimental purposes. The materials/phenomena vary widely from material properties analysis, protein mapping for pharmaceutical companies, X-ray imaging and chemical composition determination to name a few. The properties of the materials are not limited to grain structure, grain boundary and interstitial defects and morphology. These properties are studied at ambient environments but also under high pressure, temperature, stress and strain.

Docket Number: 20–007. **Applicant:** University of Chicago Argonne LLC, Operator of National Laboratory 9700 South Cass Avenue, Lemont, IL 60439–4873. **Instrument:** Canted Undulator Premasks and Exit Masks. **Manufacturer:** Strumenti Scientific CINEL S.R.L., Italy. **Intended Use:** See Notice at 85 FR 66305, October 19, 2020. **Comments:** None received. **Decision:** Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. **Reasons:** According to the applicant, the instrument will be used to study and assemble the new canted undulator front ends for the Advanced Photon Source upgrade. The front end consists of a series of components that connect the storage ring to the user beamline in order to deliver a photon beam that will be used as a three-dimensional X-ray microscope for experimental purposes. The materials/phenomena vary widely from material properties analysis,

protein mapping for pharmaceutical companies, X-ray imaging and chemical composition determination to name a few. The properties of the materials are not limited to grain structure, grain boundary and interstitial defects and morphology. These properties are studied at ambient environments but also under high pressure, temperature, stress and strain.

Dated: November 20, 2020.

Richard Herring,

Acting Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2020–26620 Filed 12–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943, C–570–944]

Certain Oil Country Tubular Goods From the People's Republic of China: Continuation of the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) and the International Trade Commission (ITC) have determined that revocation of the antidumping duty (AD) and the countervailing duty (CVD) orders on certain oil country tubular goods (OCTG) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States. Therefore, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable December 3, 2020.

FOR FURTHER INFORMATION CONTACT: Moses Song or Natasia Harrison (AD Order), AD/CVD Operations, Office VI, or Dusten Hom or Mary Kolberg (CVD Order), AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7885, (202) 482–1240, (202) 482–5075, or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2020, Commerce initiated,¹ and the ITC instituted,² five-

¹ See *Initiation of Five-Year (Sunset) Review*, 85 FR 18189 (April 1, 2020).

² See *Oil Country Tubular Goods from China; Institution of Five-Year Reviews*, 85 FR 18268 (April 1, 2020).

year (sunset) reviews of the AD and CVD orders on OCTG from China,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 *Orders* on OCTG from China would likely lead to continuation or recurrence of dumping and countervailable subsidies. Therefore, Commerce notified the ITC of the magnitude of the margins of dumping and the subsidy rates likely to prevail should the *Orders* be revoked, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act.⁴

On November 27, 2020, the ITC published its determination that revocation of the *Orders* on OCTG from China would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.⁵

Scope of the Orders

The scope of these orders consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of these orders also covers OCTG coupling stock. Excluded from the scope of these orders are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by these orders is currently classified in the

³ See *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010); see also *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010) (collectively, *Orders*).

⁴ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order*, 85 FR 45577 (July 29, 2020); and accompanying Issues and Decision Memorandum; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order*, 85 FR 38849 (June 29, 2020).

⁵ See *Certain Oil Country Tubular Goods from China*, 85 FR 76103 (November 27, 2020).

Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by these orders may also enter under the following HTSUS item numbers:

7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these 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, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders*. 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 **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 reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation notice.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–26621 Filed 12–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Final Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Products Co., Ltd. (collectively, Jinlong), Jiangsu Guyu International Trading Co., Ltd. (Guyu), and Muchsee Wood (Chuzhou) Co., Ltd. (Muchsee Wood) have not made sales of multilayered wood flooring (wood flooring) from the People's Republic of China (China) at prices below normal value during the period of review (POR) December 1, 2017 through November 30, 2018. In addition, Commerce determines that certain companies had no shipments during the POR.

DATES: Applicable December 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Alexis Cherry, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: 202–482–6478 and 202–482–0607, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of the administrative review and new shipper review on February 6, 2020.¹ For the events that occurred since Commerce published the *Preliminary Results*, see the Issues and Decision Memorandum.² Commerce conducted these reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these final results until July 27, 2020.³ On June 5, 2020, we extended the deadline for these final results to September 23, 2020.⁴ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁵ Accordingly, the revised deadline for the final results of these reviews is now November 23, 2020.

Scope of the Order⁶

The product covered by the *Order* is wood flooring from China. A full

¹ See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2017–2018, 85 FR 6911 (February 6, 2020), and accompanying preliminary decision memorandum (PDM), “Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review: Multilayered Wood Flooring from the People's Republic of China; 2017–2018.”

² See Memorandum, “Issues and Decision Memorandum: Antidumping Duty Administrative Review and New Shipper Review of Multilayered Wood Flooring from the People's Republic of China; 2017–2018,” dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum). No interested party submitted comments regarding the new shipper review; therefore, the Issues and Decision Memorandum pertains only to the administrative review.

³ 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. If the new deadline falls on a weekend or a Federal holiday, in accordance with our regulations, the deadline will be moved to the next business day. As the actual (tolled) deadline was Saturday, July 25, 2020, the next business day was Monday, July 27, 2020.

⁴ See Memorandum, “Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review and New Shipper Review,” dated June 5, 2020. As the actual (tolled) deadline was Saturday, July 25, 2020, we extended the final results deadline 60 days from this date.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

⁶ See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order, 76 FR 76690 (December 8, 2011), as amended in Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and

description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice.⁷ The Issues and 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 Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

Changes From the Preliminary Results

Based on our analysis of the comments received, Commerce made certain revisions to the calculations of the rates assigned to Jinlong, Guyu, and the non-examined, separate rate respondents. The Issues and Decision Memorandum contains descriptions of these revisions.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce determined that certain companies did not have shipments of subject merchandise during the POR. As we received no information to contradict our preliminary determination with respect to those companies, we continue to find that they made no shipments of subject merchandise to the United States during the POR. Based on information received since the *Preliminary Results*, we determine that one additional company, Guangzhou Homebon Timber Manufacturing Co., Ltd., also did not have shipments during the POR.⁸ We will issue appropriate instructions that are consistent with our "automatic assessment" clarification for all of the companies listed in Appendix II.⁹

Countervailing Duty Orders, 77 FR 5484 (February 3, 2012) (collectively, *Order*). See also Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders, 82 FR 27799 (June 19, 2017).

⁷ See Appendix I.

⁸ See Issues and Decision Memorandum at Comment 11.

⁹ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011) (*Assessment Notice*); see also "Assessment Rates" section below.

Separate Rates

In the *Preliminary Results*, we determined that Jinlong, Guyu, Muchsee Wood, and several additional companies who were not selected for individual review demonstrated their eligibility for separate rates, and we continue to do so in these final results.¹⁰

Rate for Non-Examined Separate Rate Respondents

The statute and our regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined 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 and *de minimis* margins, and any margins determined entirely {on the basis of facts available}." Accordingly, Commerce's usual practice in determining the rate for separate-rate respondents not selected for individual examination, has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.¹¹ However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to "use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters

¹⁰ See *Preliminary Results*, and Preliminary Decision Memorandum at the "Separate Rates" section; see also Issues and Decision Memorandum at Comment 5.

¹¹ See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357–60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); see also *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

and producers individually investigated."¹²

For the final results of this review, we continue to determine the estimated dumping margin for each of the individually examined respondents to be zero. Thus, consistent with the *Preliminary Results*, we assigned to all eligible non-selected respondents the zero margin assigned to Jinlong and Guyu.¹³

The China-Wide Entity

Aside from the companies for which we made a final no shipment determination, Commerce considers all other companies for which a review was requested and which did not demonstrate separate rate eligibility to be part of the China-wide entity.¹⁴ For the final results of this administrative review, we consider 17 companies to be part of the China-wide entity.

Final Results of Administrative Review

For the companies subject to this administrative review, including the companies that established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period December 1, 2017, through November 30, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
Dalian Qianqiu Wooden Product Co., Ltd./Fusong Jinlong Wooden Group Co., Ltd./Fusong Jinqiu Wooden Product Co., Ltd./Fusong Qianqiu Wooden Products Co., Ltd. (Jinlong) ¹⁵	0.00
Jiangsu Guyu International Trading Co., Ltd	0.00
Non-Selected Companies Under Review Receiving a Separate Rate ¹⁶	0.00

Final Results of New Shipper Review

Commerce determines that the following weighted-average dumping margin exists for the new shipper review covering the period December 1, 2017 through November 30, 2018:

¹² See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016).

¹³ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 17.

¹⁴ See Appendix III.

¹⁵ See Issues and Decision Memorandum at "Section IV. Affiliation and Single Entity."

¹⁶ See Appendix IV.

Producer/exporter	Weighted-average dumping margin (percent)
Muchsee Wood (Chuzhou) Co., Ltd	0.00

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of these reviews. We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results.

For Jinlong, Guyu, and Muchsee Wood, each of which have a weighted-average dumping margin of zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries that were not reported in the U.S. sales databases submitted by the companies individually examined during these reviews, and for the companies that did not qualify for a separate rate in the administrative review, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.*, 85.13 percent).¹⁷ For the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, we will also instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's assessment practice in non-market economy cases, for the companies which Commerce determined had no shipments of the subject merchandise, any suspended entries made under those exporters' case numbers (*i.e.*, at the exporters' rates) will be liquidated at the China-wide rate.¹⁸

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative and new shipper reviews

for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies which have a separate rate, the cash deposit rate will be zero; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: November 20, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- Summary
- Background
- Scope of the Order
- Affiliation and Single Entity
- Changes from the *Preliminary Results*
- Discussion of the Issues
 - General Issues*
 - Comment 1: Whether to Revise the Surrogate Financial Ratios
 - Comment 2: Whether to Revise the Surrogate Value for Labor
 - Comment 3: Whether to Revise the Surrogate Value for Inland Freight
 - Comment 4: Whether to Revise the Surrogate Value for Glue
 - Guyu Issues*
 - Comment 5: Whether to Continue to Assign a Separate Rate to Guyu
 - Comment 6: Whether to Revise the Surrogate Value for Thinner
 - Comment 7: Whether to Revise the Surrogate Value for Aluminum Paste
 - Non-Selected Company Issues*
 - Comment 8: Whether Commerce Should Have Selected Senmao as a Voluntary Respondent
 - Comment 9: Whether to Rescind the Administrative Review as to Baroque
 - Comment 10: Whether Certain Companies Filed Proper No Shipment Certifications
 - Comment 11: Whether Homebon Had Shipments
 - Comment 12: Whether to Continue to Apply a Zero Dumping Margin to the Separate Rate Companies
- Recommendation

Appendix II

No Shipments

Anhui Yaolong Bamboo & Wood Products Co. Ltd.
 Armstrong Wood Products (Kunshan) Co., Ltd.
 Baroque Timber Industries (Zhongshan) Co., Ltd.
 Benxi Flooring Factory (General Partnership)
 Changzhou Hawd Flooring Co., Ltd.
 Dunhua City Jisen Wood Industry Co., Ltd.
 Fine Furniture (Fine Furniture (Shanghai) Limited and Double F Limited)¹⁹
 Guangzhou Homebon Timber Manufacturing Co., Ltd.
 Guangzhou Panyu Kangda Board Co., Ltd.
 Hangzhou Zhengtian Industrial Co., Ltd.
 Hunchun Forest Wolf Wooden Industry Co., Ltd.
 Huzhou Jesonwood Co., Ltd.
 Innomaster Home (Zhongshan) Co., Ltd.
 Jiangsu Yuhui International Trade Co., Ltd.
 Jiashan On-Line Lumber Co., Ltd.
 Kingman Floors Co., Ltd.

¹⁷ See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017, 84 FR 38002, 38003 (August 5, 2019).

¹⁸ For a full discussion of this practice see *Assessment Notice*.

¹⁹ Commerce is only reviewing entries where Fine Furniture (Shanghai) Limited and/or Double F Limited was the exporter but Fine Furniture (Shanghai) Limited was not the producer of subject merchandise.

Linyi Anying Wood Co., Ltd.
 Shandong Longteng Wood Co., Ltd.
 Shanghai floor Timber (Shanghai) Co., Ltd.
 Xuzhou Antop International Trade Co., Ltd.
 Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
 Zhejiang Shuimojiangnan New Material Technology Co., Ltd.

Appendix III

China-Wide Entity

Anhui Boya Bamboo & Wood Products Co., Ltd.
 Chinafloors Timber (China) Co., Ltd.
 Dalian Guhua Wooden Product Co., Ltd.
 Dalian Huade Wood Product Co., Ltd.
 Dalian Huilong Wooden Products Co., Ltd.
 Dalian Jaenmaken Wood Industry Co., Ltd.
 Houzhou Chenchang Wood Co., Ltd.
 Jiafeng Wood (Suzhou) Co., Ltd.
 Linyi Bonn Flooring Manufacturing Co., Ltd.
 Power Dekor North America Inc.
 Shanghai Lairunde Wood Co., Ltd.
 Shenzhenshi Huanwei Woods Co., Ltd.
 Xiamen Yung De Ornament Co., Ltd.
 Zhejiang Biyork Wood Co., Ltd.
 Zhejiang Fudeli Timber Industry Co., Ltd.
 <Zhejiang Jiechen Wood Industry Co., Ltd.
 Zhejiang Simite Wooden Co., Ltd.

Appendix IV

Non-Selected Companies Under Review Receiving a Separate Rate

A&W (Shanghai) Woods Co., Ltd.
 Anhui Longhua Bamboo Product Co., Ltd.
 Benxi Wood Company
 Dalian Dajen Wood Co., Ltd.
 Dalian Deerfu Wooden Product Co., Ltd.
 Dalian Jiahong Wood Industry Co., Ltd.
 Dalian Kemian Wood Industry Co., Ltd.
 Dalian Penghong Floor Products Co., Ltd.
 Dalian Shengyu Science And Technology Development Co., Ltd.
 Dalian Shumaike Floor Manufacturing Co., Ltd.
 Dalian T-Boom Wood Products Co., Ltd.
 Dongtai Fuan Universal Dynamics, LLC
 Dunhua City Dexin Wood Industry Co., Ltd.
 Dunhua City Hongyuan Wood Industry Co., Ltd.
 Dunhua City Wanrong Wood Industry Co., Ltd.
 Dun Hua Sen Tai Wood Co., Ltd.
 Dunhua Shengda Wood Industry Co., Ltd.
 Guangzhou Panyu Southern Star Co., Ltd.
 HaiLin LinJing Wooden Products, Ltd.
 Hangzhou Hanje Tec Company Limited
 Hunchun Xingjia Wooden Flooring Inc.
 Huzhou Chenghang Wood Co., Ltd.
 Huzhou Fulinmen Imp. & Exp. Co., Ltd.
 Huzhou Sunergy World Trade Co., Ltd.
 Jiangsu Keri Wood Co., Ltd.
 Jiangsu Mingle Flooring Co., Ltd.
 Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.
 Jiangsu Simba Flooring Co., Ltd.
 Jiasan HuiJiaLe Decoration Material Co., Ltd.
 Jiaying Hengtong Wood Co., Ltd.
 Jilin Xinyuan Wooden Industry Co., Ltd.
 Karly Wood Product Limited
 Kember Flooring, Inc.
 Kemian Wood Industry (Kunshan) Co., Ltd.
 Lauzon Distinctive Hardwood Flooring, Inc.
 Linyi Youyou Wood Co., Ltd.

Metropolitan Hardwood Floors, Inc.
 Mudanjiang Bosen Wood Industry Co., Ltd.
 Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.
 Omni Arbor Solution Co., Ltd.²⁰
 Pingte Timber Manufacturing (Zhejiang) Co., Ltd.
 Power Dekor Group Co., Ltd.
 Scholar Home (Shanghai) New Material Co., Ltd.
 Shenyang Haobainian Wooden Co., Ltd.
 Sino-Maple (Jiangsu) Co., Ltd.
 Suzhou Dongda Wood Co., Ltd.
 Tongxiang Jisheng Import and Export Co., Ltd.
 Xuzhou Shenghe Wood Co., Ltd.
 Yekalon Industry Inc.
 Yihua Lifestyle Technology Co., Ltd.
 (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)
 Zhejiang Dadongwu Green Home Wood Co., Ltd.
 Zhejiang Fuerjia Wooden Co., Ltd.
 Zhejiang Longsen Lumbering Co., Ltd.
 Zhejiang Shiyong Timber Co., Ltd.
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DEPARTMENT OF COMMERCE

International Trade Administration

[C-523-816, C-489-845]

Certain Aluminum Foil From the Sultanate of Oman and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 3, 2020.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III (Sultanate of Oman); and Eliza Siordia, AD/CVD Operations, Office V (Republic of Turkey); Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1009 and (202) 482-3878, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2020, the Department of Commerce (Commerce) initiated the countervailing duty (CVD) investigations of certain aluminum foil

from the Sultanate of Oman and the Republic of Turkey.¹ Currently, the preliminary determinations are due no later than December 23, 2020.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.²

On November 23, 2020, the petitioners³ in these investigations submitted a timely request that Commerce postpone the preliminary CVD determinations.⁴ According to the petitioners, additional time is necessary to allow Commerce to “analyze fully the questionnaire responses, request any necessary clarifications and determine the extent to which countervailable subsidies have benefited the respondents in the preliminary phase of these proceedings.”⁵ Consistent with 19 CFR 351.205(e), the petitioners stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is

¹ See *Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 68287 (October 28, 2020).

² See 19 CFR 351.205(e).

³ The petitioners consist of the Aluminum Association Trade Enforcement Working Group and its individual members: Gränges Americas Inc., JW Aluminum Company, and Novelis Corporation.

⁴ See Petitioners' Letter, “Countervailing Duty Investigations Concerning Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey—Petitioners' Request to Postpone Preliminary Determinations,” dated November 23, 2020.

⁵ *Id.* at 2.

²⁰ In the *Preliminary Results*, Commerce inadvertently identified this company as “Omni Arbor Solutions Co., Ltd.” See Letters from Omni Arbor Solution Co., Ltd., “Multilayered Wood Flooring from the People's Republic of China Request for Review,” dated December 31, 2018, and “Multilayered Wood Flooring from China: Case Brief—Omni Arbor Solution Co., Ltd.,” dated March 10, 2020.

postponing the deadline for the preliminary determinations to no later than 130 days after the date on which this investigation was initiated, *i.e.*, February 26, 2021. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-26623 Filed 12-2-20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-834-811]

Silicon Metal From the Republic of Kazakhstan: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of silicon metal from the Republic of Kazakhstan (Kazakhstan). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 3, 2020.

FOR FURTHER INFORMATION CONTACT: Justin Neuman, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0486.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on July 27, 2020.¹ On September 8,

2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now November 27, 2020.² For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. 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 at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is silicon metal from Kazakhstan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁶

Investigation, 85 FR 45173 (July 27, 2020) (*Initiation Notice*).

² *See Silicon Metal from the Republic of Kazakhstan: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 55412 (September 8, 2020).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ *See Initiation Notice*, 85 FR at 45174.

⁶ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E)

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁷ For further information, *see* "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigations of silicon metal from Iceland and Bosnia and Herzegovina based on a request made by the petitioners.⁸ Consequently, the final CVD determination will be issued on the same date as the final AD determinations in those cases, which are currently scheduled to be issued no later than February 22, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates 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 subsidy rate for all other producers or exporters.

In this case, the countervailable subsidy rate calculated for the

of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁷ *See* sections 776(a) and (b) of the Act.

⁸ *See* Petitioners' Letter, "Silicon Metal from Kazakhstan: Petitioners' Request for Alignment of Countervailing Duty Investigation Final Determination Deadline with Antidumping Duty Final Determination Deadlines in Silicon Metal from Bosnia and Herzegovina and Silicon Metal from Iceland," dated October 30, 2020.

¹ *See Silicon Metal from the Republic of Kazakhstan: Initiation of Countervailing Duty*

investigated companies is based entirely on facts available under section 776 of the Act. However, there is no other information on the record upon which to determine an all-others rate. As a result, we have used the rate assigned to the mandatory respondents as the all-others rate. This method is consistent with Commerce's past practice.⁹

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Tau-Ken Temir LLP and JSC NMC Tau-Ken Samruk ¹⁰ ..	120.00
All Others	120.00

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the public announcement of, where 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 adverse facts available (AFA) to the individually examined company Tau-Ken Temir LLP/JSC NMC Tau-Ken Samruk in this investigation in accordance with section 776 of the Act, and the applied AFA rate is based solely on information provided

by the Government of Kazakhstan, there are no calculations to disclose.

Verification

Because TKT did not provide information requested by Commerce in this investigation and Commerce preliminarily determines that the company has been uncooperative, Commerce will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be announced at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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 the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at 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 5 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.¹²

¹¹ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹² See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, 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 pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: November 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Injury Test
- V. Alignment
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Subsidies Valuation
- VIII. Analysis of Programs
- IX. Calculation of the All-Others Rate
- X. Recommendation

[FR Doc. 2020-26627 Filed 12-2-20; 8:45 am]

BILLING CODE 3510-DS-P

⁹ See, e.g., *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Tau-Ken Temir LLP and JSC NMC Tau-Ken Samruk: Silicon Metal LLP, Metallurgical Combine KazSilicon LLP, National Welfare Fund "Samruk-Kazyna" JSC, "Ekibastuz GRES-2 station" JSC, and JSC KEGOC.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–854]

Standard Steel Welded Wire Mesh From Mexico: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of standard steel welded wire mesh (wire mesh) from Mexico. The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 3, 2020.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:**Background**

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this investigation on July 20, 2020.¹ On September 9, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now November 27, 2020.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. 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 at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wire mesh from Mexico. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage and rebuttal comments submitted on the record for this investigation, see the Preliminary Decision Memorandum. Commerce has not modified the scope language as it appeared in the *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient and that the subsidy is specific.⁶

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondent did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁷ For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

Date of Final Determination

Section 705(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, unless the final determination is

postponed or aligned with the final determination of a companion AD investigation of wire mesh. Accordingly, Commerce intends to make its final determination no later than February 10, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Deacero S.A.P.I. de C.V. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Aceromex S.A. De C.V. (Aceromex). Consequently, the rate calculated for Aceromex is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Aceromex S.A. De C.V.	1.02
Deacero S.A.P.I. de C.V.	102.09
All Others	1.02

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

¹ See *Standard Steel Welded Wire Mesh from Mexico: Initiation of Countervailing Duty Investigation*, 85 FR 45181 (July 27, 2020).

² See *Standard Steel Welded Wire Mesh from Mexico: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 55640 (September 9, 2020).

³ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Countervailing Duty Determination of Standard Steel Welded Wire Mesh from Mexico," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ See *Initiation Notice*.

⁶ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁷ See sections 776(a) and (b) of the Act.

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.⁸ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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 the party's name, address, and telephone number; the number of participants; whether any participant is a foreign national; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.⁹ 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 5 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

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, 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 pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: November 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers uncoated standard welded steel reinforcement wire mesh (wire mesh) produced from smooth or deformed wire. Subject wire mesh is produced in square and rectangular grids of uniformly spaced steel wires that are welded at all intersections. Sizes are specified by combining the spacing of the wires in inches or millimeters and the wire cross-sectional area in hundredths of square inch or millimeters squared. Subject wire mesh may be packaged and sold in rolls or in sheets.

Subject wire mesh is currently produced to ASTM specification A1064/A1064M, which covers carbon-steel wire and welded wire reinforcement, smooth and deformed, for concrete in the following seven styles:

1. 6 x 6 W1.4/W1.4 or D1.4/D1.4
2. 6 x 6 W2.1/W2.1 or D2.1/D2.1
3. 6 x 6 W2.9/W2.9 or D2.9/D2.9
4. 6 x 6 W4/W4 or D4/D4
5. 6 x 12 W4/W4 or D4/D4
6. 4 x 4 W2.9/W2.9 or D2.9/D2.9
7. 4 x 4 W4/W4 or D4/D4

The first number in the style denotes the nominal spacing between the longitudinal wires and the second number denotes the nominal spacing between the transverse wires. In the first style listed above, for example, "6 x 6" denotes a grid size of six inches by six inches. "W" denotes the use of smooth wire, and "D" denotes the use of deformed wire in making the mesh. The number following the W or D denotes the nominal cross-sectional area of the transverse and longitudinal wires in hundredths of a square inch (*i.e.*, W1.4 or D1.4 is .014 square inches).

Smooth wire is wire that has a uniform cross-sectional diameter throughout the length of the wire.

Deformed wire is wire with indentations or raised transverse ribs, which results in wire that does not have a uniform cross-sectional diameter throughout the length of the wire.

Rolls of subject wire mesh are produced in the following styles and nominal width and length combinations:

Style: 6 x 6 W1.4/W1.4 or D1.4/D1.4 (*i.e.*, 10 gauge)

Roll Sizes:

5' x 50'
5' x 150'
6' x 150'
5' x 200'
7' x 200'
7.5' x 200'

Style: 6 x 6 W2.1/W2.1 or D2.1/D2.1 (*i.e.*, 8 gauge)

Roll Sizes: 5' x 150'

Style: 6 x 6 W2.9/W2.9 or D2.9/D2.9 (*i.e.*, 6 gauge)

Roll Sizes:

5' x 150'
7' x 200'

All rolled wire mesh is included in scope regardless of length.

Sheets of subject wire mesh are produced in the following styles and nominal width and length combinations:

Style: 6 x 6 W1.4/W1.4 or D1.4/D1.4 (*i.e.*, 10 gauge)

Sheet Size:

3'6" x 7'
4' x 7'
4' x 7'6"
5' x 10'
7' x 20'
7'6" x 20'
8' x 12'6"
8' x 15'
8' x 20'

Style: 6 x 6 W2.1/W2.1 or D2.1/D2.1 (*i.e.*, 8 gauge)

Sheet Size:

5' x 10'
7' x 20'
7'6" x 20'
8' x 12'6"
8' x 15'
8' x 20'

Style: 6 x 6 W2.9/W2.9 or D2.9/D2.9 (*i.e.*, 6 gauge)

Sheet Size:

3'6" x 20'
5' x 10'
7' x 20'
7'6" x 20'
8' x 12'6"
8' x 15'
8' x 20'

Style: 6 x 12 W4/W4 or D4/D4 (*i.e.*, 4 gauge)

Sheet Size: 8' x 20'

Style: 4 x 4 W2.9/W2.9 or D2.9/D2.9 (*i.e.*, 6 gauge)

Sheet Size:

5' x 10'
7' x 20'
7'6" x 20'
8' x 12'6"
8' x 12'8"
8' x 15'
8' x 20'

Style: 4 x 4 W4/W4 or D4/D4 (*i.e.*, 4 gauge)

Sheet Size:

5' x 10'
8' x 12'6"

⁸ See 19 CFR 351.309; 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 351.310(c).

¹⁰ See *Temporary Rule*, 85 FR 41363.

8' x 12'8"
8' x 15'
8' x 20'

Any product imported, sold, or invoiced in one of these size combinations is within the scope.

ASTM specification A1064/A1064M provides for permissible variations in wire

gauges, the spacing between transverse and longitudinal wires, and the length and width combinations. To the extent a roll or sheet of welded wire mesh falls within these permissible variations, it is within this scope.

ASTM specification A1064/A1064M also defines permissible oversteeling, which is the use of a heavier gauge wire with a larger cross-sectional area than nominally specified.

It also permits a wire diameter tolerance of ± 0.003 inches for products up to W5/D5 and ± 0.004 for sizes over W5/D5. A producer may oversteel by increasing smooth or deformed wire diameter up to two whole number size increments on Table 1 of A1064. Subject wire mesh has the following actual wire diameter ranges, which account for both oversteeling and diameter tolerance:

W/D No.	Maximum oversteeling No.	Diameter range (inch)
1.4 (i.e., 10 gauge)	3.4	0.093 to 0.211.
2.1 (i.e., 8 gauge)	4.1	0.161 to 0.231.
2.9 (i.e., 6 gauge)	4.9	0.189 to 0.253.
4.0 (i.e., 4 gauge)	6.0	0.223 to 0.280.

To the extent a roll or sheet of welded wire mesh falls within the permissible variations provided above, it is within this scope.

In addition to the tolerances permitted in ASTM specification A1064/A1064M, wire mesh within this scope includes combinations where:

1. A width and/or length combination varies by $\pm$ one grid size in any direction, i.e., ± 6 inches in length or width where the wire mesh's grid size is "6 x 6"; and/or

2. The center-to-center spacing between individual wires may vary by up to one quarter of an inch from the nominal grid size specified.

Length is measured from the ends of any wire and width is measured between the center-line of end longitudinal wires.

Additionally, although the subject wire mesh typically meets ASTM A1064/A1064M, the failure to include certifications, test reports or other documentation establishing that the product meets this specification does not remove the product from the scope. Wire mesh made to comparable foreign specifications (e.g., DIN, JIS, etc.) or proprietary specifications is included in the scope.

Excluded from the scope is wire mesh that is galvanized (i.e., coated with zinc) or coated with an epoxy coating. In order to be excluded as galvanized, the excluded welded wire mesh must have a zinc coating thickness meeting the requirements of ASTM specification A641/A641M. Epoxy coating is a mix of epoxy resin and hardener that can be applied to the surface of steel wire.

Merchandise subject to this investigation are classified under Harmonized Tariff Schedule of the United States (HTSUS) categories 7314.20.0000 and 7314.39.0000. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Injury Test
- VI. Use of Facts Otherwise Available and

- Adverse Inferences
- VII. Subsidies Valuation
- VIII. Analysis of Programs
- IX. Recommendation

[FR Doc. 2020-26628 Filed 12-2-20; 8:45 am]

BILLING CODE 3510-DS-P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

Rescheduled Public Hearing

AGENCY: U.S. International Development Finance Corporation.

ACTION: Announcement of new date/time for public hearing, previously scheduled for December 9, 2020, 2p.m.

SUMMARY: The Board of Directors of the U.S. International Development Finance Corporation ("DFC") will hold a public hearing on December 10, 2020. This hearing will afford an opportunity for any person to present views in accordance with the BUILD Act of 2018. Those wishing to present at the hearing must provide advance notice to the agency as detailed below. Please note that this hearing was originally scheduled for Wednesday, December 9, 2020; notice of which was published in the **Federal Register** on Thursday, November 5, 2020.

DATES: Public hearing: 2:00 p.m., Thursday, December 10, 2020.

Deadline for notifying agency of an intent to attend or present at the public hearing: 5:00 p.m., Thursday, December 3, 2020.

Deadline for submitting a written statement: 5:00 p.m., Thursday, December 3, 2020.

ADDRESSES: *Public hearing:* Virtual; Access information provided at the time of attendance registration.

You may send notices of intent to attend, present, or submit a written statement to Catherine F. I. Andrade, DFC Corporate Secretary, via email at candrade@dfc.gov.

Instructions: A notice of intent to attend the public hearing or to present at the public hearing must include the individual's name, title, organization, address, email, telephone number, and a concise summary of the subject matter to be presented. Oral presentations may not exceed five (5) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard. Submission of written statements must include the individual's name, title, organization, address, email, and telephone number. The statement must be typewritten, double-spaced, and may not exceed ten (10) pages.

FOR FURTHER INFORMATION CONTACT:

Catherine F.I. Andrade, DFC Corporate Secretary, (202) 336-8768, or candrade@dfc.gov.

SUPPLEMENTARY INFORMATION: The public hearing will take place via video- and teleconference. Upon registering, participants and observers will be provided instructions on accessing the hearing. DFC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the time of the hearing.

Authority: 22 U.S.C. 9613(c).

Catherine F.I. Andrade,
DFC Corporate Secretary.

[FR Doc. 2020-26608 Filed 12-2-20; 8:45 am]

BILLING CODE 3210-02-P

DEPARTMENT OF EDUCATION**Meeting of the National Advisory Council on Indian Education (NACIE)**

AGENCY: National Advisory Council on Indian Education (NACIE), Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: Notice of this meeting is required by the Federal Advisory Committee Act (FACA) and is intended to notify members of the public of an upcoming NACIE open teleconference meeting.

DATES: The NACIE open teleconference meeting will be held on December 18, 2020 from 2:00–4:00 p.m. (EST).

FOR FURTHER INFORMATION CONTACT:

Angela Hernandez, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: 202–205–1909, Email: Angela.Hernandez@ed.gov.

SUPPLEMENTARY INFORMATION: *Statutory Authority and Function:* NACIE is authorized by Section 6141 of the Elementary and Secondary Education Act of 1965. NACIE is established within the U.S. Department of Education to advise the Secretary of Education (Secretary) and the Secretary of Interior on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or that may benefit Indian children or adults, including any program established under Title VI, Part A of the Elementary and Secondary Education Act. In addition, NACIE advises the White House Initiative on American Indian and Alaska Native Education, in accordance with Section 5(a) of Executive Order 13592. NACIE submits to the Congress each year a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Meeting Agenda: The purpose of the meeting is to convene NACIE to conduct the following business: (1) Approve the draft annual report to Congress, (2) update regarding operating procedures under FACA, (3) update regarding

bylaws for FACA boards/committees, and (4) update on FACA boards/committees and the election of boards/committees.

Instructions for Accessing the Meeting

Members of the public may access the NACIE meeting by dial-in listen only access. Up to 100 lines will be available to participants of on a first come, first serve basis. The dial-in phone number for the teleconference meeting is 1–408–650–3123 and the participant code is 604–247–301.

Public Comment: Members of the public interested in submitting written comments pertaining to the work of NACIE may do so via email to Angela.Hernandez@ed.gov. Please note, written comments should pertain to the work of NACIE and/or the Office of Indian Education.

Reasonable Accommodations: The teleconference meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice not later than Monday, November 30, 2020. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official open meeting report of this meeting on the OESE website at: <https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/> 21 days after the meeting. Pursuant to the FACA, the public may also inspect NACIE records at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday-Friday, 8:30 a.m. to 5:00 p.m. Eastern Time. Please email Angela.Hernandez@ed.gov to schedule an appointment. Our ability to provide an inspection opportunity is limited to potential novel coronavirus (COVID–19) restrictions.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must

have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: § 6141 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by Every Student Succeeds Act (ESSA) (20 U.S.C. 7471).

Frank Brogan,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2020–26624 Filed 12–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[ED–2020–FSA–0086]

Privacy Act of 1974; Matching Program

AGENCY: Department of Education.

ACTION: Notice of a new Computer Matching Agreement (CMA).

SUMMARY: This document provides notice of a new CMA between the Department of Education (ED) and the Department of Justice (DOJ). The current 18-month CMA was recertified for an additional 12 months on January 2, 2020 and will automatically expire on January 1, 2021.

DATES: Submit your comments on the proposed CMA on or before January 4, 2021.

The CMA will be effective the later of: (1) January 2, 2021, or (2) January 4, 2021, unless comments have been received from interested members of the public requiring modification and republication of the notice. The CMA will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency

documents, submitting comments, and viewing the docket, is available on the site under the “help” tab.

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this new CMA, address them to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Privacy Note: ED’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Gerard Duffey, Management and Program Analyst, Wanamaker Building, U.S. Department of Education, Federal Student Aid, 100 Penn Square East, Suite 509.B10, Philadelphia, PA 19107. Telephone: (215) 656–3249.

SUPPLEMENTARY INFORMATION: We provide this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (CMPPA); the Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818, June 19, 1989); and OMB Circular A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act (81 FR 94424, December 23, 2016).

Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

Authority for Conducting the Matching Program

Under section 421 (hereinafter referred to as “section 5301”) of the Controlled Substances Act (21 U.S.C. 862), an individual convicted of a Federal or State drug trafficking or possession offense may be denied, at the discretion of the court, certain Federal benefits, including those under the Federal Student Financial Assistance Programs authorized by title IV of the Higher Education Act (HEA) of 1965, as amended (title IV, HEA student financial assistance). The Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouse Programs (DFB/DPFD) database (formerly known as DEBARS) collects information regarding those

individuals for whom benefits are denied and forwards this information to the General Services Administration (GSA) for inclusion in the publication “Lists of Parties Excluded from Federal Procurement or Non-procurement Programs,” more commonly known as the “Debarment List.” Federal agencies are required by law to consult the Debarment List, prior to the provision of certain benefits. However, ED and DOJ have determined that, for purposes of verifying title IV, HEA student financial assistance eligibility, direct access to the DFB/DPFD database would be more useful than access to the GSA’s Debarment List because the DFB/DPFD database contains information essential to the effective operation of the match that is not available in the GSA List.

By matching the names, dates of birth, and SSNs in the DFB/DPFD database with ED’s student financial aid records, ED is able to identify students who do not qualify for Federal student financial assistance pursuant to the provisions set forth in the Controlled Substances Act. DOJ’s system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the CMA the records of only those individuals who have been denied Federal benefits under one or more of the title IV, HEA programs. Thus, ED avoids the cost of disbursing student financial assistance funds to individuals who do not qualify for Federal student financial assistance, but who would otherwise receive aid had the CMA not existed.

DOJ is the lead contact agency for information related to violations of section 5301 and, as such, provides this data to ED. The 18-month CMA was recertified for an additional 12 months on January 2, 2020 and will automatically expire on January 1, 2021.

Purpose(s)

The purpose of this matching program is to ensure that the requirements of section 421 of the Controlled Substances Act (originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 21 U.S.C. 853a, which was amended and re-designated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Pub. L. 101–647) (hereinafter referred to as “section 5301”) are met.

DOJ is the lead contact agency for information related to section 5301 violations and, as such, provides this data to ED. ED seeks access to the information contained in the Denial of Federal Benefits and Defense

Procurement Fraud Debarment Clearinghouse program (DFB/DPFD) database (formerly known as DEBARS) that is authorized under section 5301 for the purpose of ensuring that HEA student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to the Denial of Federal Benefits Program.

Categories of Individuals

The individuals whose records are included in this matching program are individuals who are the subject of section 5301 denial of benefits court orders, and all students who complete a Free Application for Federal Student Aid. ED receives data from the DOJ DFB/DPFD system that is used to match title IV, HEA applicant data in ED’s Central Processing System (Federal Student Aid Application File (18–11–01)).

Categories of Records

ED will use the Social Security number (SSN), date of birth, and the first two letters of an applicant’s last name for the match. These data elements are contained in ED’s Central Processing System. The DOJ DFB/DPFD system contains the names, SSNs, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the title IV, HEA programs.

System(s) of Records

DOJ system of records: DFB/DPFD (The most recent full DFB/DPFD system of records notice was published in the **Federal Register** on May 10, 1999, 64 FR 25071). ED system of records: Federal Student Aid Application File (18–11–01). (The most recent ED system of records notice was published in the **Federal Register** on October 29, 2019, 84 FR 57856). (Note: The ED Central Processing System (CPS) is the ED information system that processes data from the Federal Student Aid Application File.)

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by

contacting the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Brown,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2020–26478 Filed 12–1–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0152]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Third Party Servicer Data Collection

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 4, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand the Department’s information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Third Party Servicer Data Collection.

OMB Control Number: 1845–0130.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Private Sector; Individuals and Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 107.

Total Estimated Number of Annual Burden Hours: 56.

Abstract: The Department of Education (the Department) is seeking an revision of the OMB approval of a Third Party Servicer Data Form. This form collects information from third party servicers. This form is used to validate the information reported to the Department by higher education institutions about the third party servicers that administer one or more aspects of the administration of the Title IV, HEA programs on an institution’s behalf. This form also collects additional information required for effective oversight of these entities. There has been no change to the supporting regulatory language. We have reevaluated the usage of the form and there is a resulting decrease in the number of respondents and burden hours.

Dated: November 30, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–26610 Filed 12–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12514–086]

Northern Indiana Public Service Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. **Application Type:** Temporary Variance from Reservoir Elevation.

b. **Project No.:** 12514–086.

c. **Date Filed:** November 2, 2020 and supplemented on November 24, 2020.

d. **Applicant:** Northern Indiana Public Service Company.

e. **Name of Project:** Norway Oakdale Hydroelectric Project.

f. **Location:** The Norway Oakdale Hydroelectric Project is located on the Tippecanoe River in Carroll and White Counties, Indiana.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. **Applicant Contact:** M. Bryan Little, Senior Counsel, NiSource Corporate Services, 150 West Market Street, Ste. 600, Indianapolis, IN 46204, (317) 684–4903.

i. **FERC Contact:** Zeena Aljibury, (202) 502–6065, zeena.aljibury@ferc.gov.

j. **Deadline for filing comments, motions to intervene, and protests:** 14 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/doc-sfiling/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659.

(TTY). In lieu of electronic filing, please mail a paper copy to: Secretary, 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. The first page of any filing should include docket number P-12514-086. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests Commission approval for a temporary variance from the reservoir elevation requirements at Lake Shafer. Due to the severe regional drought conditions and low river flow on the Tippecanoe River, the applicant is operating the project under abnormal river conditions and requests a variance from the allowable elevation at Lake Shafer (maintain fluctuation within of 0.25 feet below elevation 647.47 feet NGVD) so that it can continue to meet the flow requirements from the downstream Lake Freeman development to protect the federally endangered mussel species. Although the duration of drought conditions are difficult to predict, the applicant requests the temporary variance to remain into effect until March 31, 2021, which is when winter weather conditions typically begin to subside and will produce sufficient flow from melting snow and ice to allow Lake Shafer to return to its normal elevation.

l. *Locations of the Application:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the

Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 25, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-26618 Filed 12-2-20; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, December 8, 2020 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694-1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020-26768 Filed 12-1-20; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than December 18, 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. *Basswood Capital Management, LLC, on behalf of itself, as investment manager to the following funds: Basswood Opportunity Partners, LP, Basswood Financial Fund, LP, Basswood Financial Long Only Fund, LP, Basswood Opportunity Fund, Inc., and Basswood Financial Fund, Inc., and as investment adviser to certain managed accounts; Basswood Partners LLC, as general partner for certain funds; Matthew Lindenbaum and Bennett Lindenbaum, all of New York, New York; to acquire voting shares of Esquire Financial Holdings, Inc., and thereby indirectly acquire voting shares of Esquire Bank NA, both of Jericho, New York.*

Board of Governors of the Federal Reserve System, November 30, 2020.

Michele Taylor Fennell,

Deputy Secretary of the Board.

[FR Doc. 2020-26622 Filed 12-2-20; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-21-20MT]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *The National Firefighter Registry* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on April 27, 2020 to obtain comments from the public and affected agencies. CDC did

not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by

fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Firefighter Registry—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In order to accurately monitor trends in cancer incidence and evaluate control measures among the U.S. Fire Service, Congress passed the Firefighter Cancer Registry Act of 2018. This legislation directed CDC/NIOSH to create a registry of U.S. firefighters for the purpose of monitoring cancer incidence and risk factors among the current U.S. Fire service. The legislation authorized funding of the project for five years as of fiscal year 2019.

The main goal of the National Firefighter Registry (NFR), according to the Firefighter Cancer Registry Act of 2018, is, "to develop and maintain a voluntary registry of firefighters to collect relevant health and occupational information of such firefighters for purposes of determining cancer incidence." Results from the NFR will provide information for decision makers within the fire service and medical or public health community to devise and implement policies and procedures to lessen cancer risk and/or improve early detection of cancer among firefighters.

The below table outlines the estimated time burden for participants enrolling in the NFR. There are three corresponding documents to be completed as part of the enrollment process; the Informed Consent, User Profile, and Enrollment Questionnaire.

The estimated time burden for the Informed Consent and User Profile are five minutes each, and an estimated 30 minute burden for the enrollment questionnaire.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
U.S. Firefighters	Informed Consent	66,666	1	5/60
U.S. Firefighters	NFR User Profile (web-portal registration)	66,666	1	5/60
U.S. Firefighters	NFR Enrollment Questionnaire	66,666	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.

[FR Doc. 2020-26630 Filed 12-2-20; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-21-1074]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Colorectal Cancer Control (CRCCP) Monitoring Activities to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on June 5, 2020 to obtain comments from the public and affected agencies. CDC received two non-substantive public comments and provided responses to each. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

- (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected;
- (d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and
- (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy

of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Colorectal Cancer Control Program (CRCCP) Monitoring Activities (OMB Control No. 0920-1074, Exp. 7/31/2020)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a Reinstatement with Change to OMB Control No. 0920-1074. CDC proposes use of a modified annual grantee survey instrument (renamed “Annual Awardee Survey”), a modified clinic-level data collection instrument, and a new awardee-level Quarterly Program Update. The number of respondents will increase from 30 to 35 awardees, and the total estimated annualized burden will increase.

Colorectal cancer (CRC) is the second leading cause of death from cancer in the United States among cancers that affect both men and women. There is substantial evidence that CRC screening reduces the incidence of and death from the disease. Screening for CRC can detect disease early, when treatment is more effective, and prevent cancer by finding and removing precancerous polyps. Of individuals diagnosed with early stage CRC, more than 90% live five or more years. To reduce CRC morbidity, mortality, and associated costs, use of CRC screening tests must be increased among age-eligible adults with the lowest CRC screening rates.

The purpose of the Colorectal Cancer Control Program (CRCCP) is to partner with health systems and their individual primary care clinics to implement evidence-based interventions (EBIs) to increase CRC screening among defined populations of adults ages 50-75 that have CRC screening rates lower than the national, regional, or local rate.

In 2020, CDC issued a new funding opportunity, *Public Health and Health System Partnerships to Increase Colorectal Cancer Screening in Clinical Settings* (DP20-2002), a five-year cooperative agreement to increase CRC screening among defined populations of adults ages 50-75 that have CRC screening rates lower than the national, regional, or local rate. DP20-2002 funds recipients to partner with health systems and their primary care clinics to implement multiple EBIs, partner with organizations to support implementation of EBIs in those clinics, and collect high-quality clinic-level data when a clinic is recruited to participate (baseline) and annually thereafter to monitor EBI implementation and assess screening rate changes. DP20-2002 eliminates funding to provide direct clinical service delivery. However, DP20-2002 requires recipients to conduct a formal readiness assessment of potential clinics to implement EBIs, use assessment findings to select appropriate EBIs for implementation, and provide clinics with limited financial resources to support follow-up colonoscopies for under- and uninsured patients after an abnormal CRC screening test.

CDC proposes three information collections—a modified Annual Awardee Survey, a modified Clinic-Level Data Collection Instrument, and a new awardee-level Quarterly Program Update—to reflect modified goals for the new cooperative agreement and a modified monitoring plan.

The Annual Awardee Survey eliminates questions related to clinic service delivery, which is no longer funded under DP20-2002. In addition, many program management questions were eliminated and will now be gathered via the Quarterly Program Update on a quarterly basis to better inform CDC technical assistance (TA). The survey now includes five items regarding the effect of COVID-19 on CRCCP implementation at the grantee level.

The modified clinic-level data collection instrument was reorganized for increased efficiency and overall data quality improvement. In addition, wording and responses for many variables and their response options have undergone minor revisions to better capture awardees’ partnerships with both health systems and clinics, and appropriate capture of baseline and annual variables. The instrument gathers information to assess health system and clinic characteristics; program reach; CRC screening practices and outcomes; clinics’ quality improvement and monitoring activities;

EBI implementation; additional factors that affect EBI implementation over time; and the effect of COVID-19 on CRCCP implementation at the clinic level.

The new Quarterly Program Update survey will collect standardized awardee-level information on aspects of program management, including (1) respondent information, (2) award spending, (3) staff vacancies, (4) program successes and challenges, (5)

TA needs, and (6) COVID-19. This information collection will provide CDC staff rapid reporting of programmatic information to inform their efforts to provide awardees with tailored TA.

Redesigned data elements will enable CDC to better gauge progress in meeting CRCCP program goals and monitor implementation activities, evaluate outcomes, and identify awardee TA needs. In addition, data collected will inform program improvement and help

identify successful activities that need to be maintained, replicated, or expanded.

OMB approval is requested for three years. The number of awardees will increase from 30 to 35 awardees, and the number of clinic partners is expected to increase from 12 to 24 per awardee. Therefore, the total estimated annualized burden hours have increased from 204 to 760 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
CRCCP Awardees	CRCCP Annual Awardee Survey	35	1	15/60
	CRCCP Clinic-level Data Collection Instrument	35	24	50/60
	CRCCP Quarterly Program Update	35	4	22/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.

[FR Doc. 2020-26631 Filed 12-2-20; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-21-1108; Docket No. CDC-2020-0119]

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 the existing information collection project titled Paul Coverdell National Acute Stroke Program (PCNASP) reporting system, which was established to improve quality of care for acute stroke patients from onset of signs and symptoms through hospital care and rehabilitation and recovery.

DATES: CDC must receive written comments on or before February 1, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2020-0119 by any of the following methods:

- *Federal eRulemaking Portal:*

Regulations.gov. Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new

proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Paul Coverdell National Acute Stroke Program (PCNASP) (OMB Control No. 0920-1108, Exp. 09/30/2022)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Stroke is the fifth leading cause of death in the United States and results in approximately 145,000 deaths per year. Additionally, approximately 800,000 stroke events are reported each year, including approximately 250,000 recurrent strokes. However, many strokes are preventable, or patient outcomes post-stroke can be improved through coordinated care that begins at stroke onset and is delivered in a timely manner.

Stroke outcomes depend upon the rapid recognition of signs and symptoms of stroke, prompt transport to a treatment facility, and early rehabilitation. Improving outcomes requires a coordinated systems approach involving pre-hospital care, emergency department and hospital care, post-stroke rehabilitation, prevention of complications, and ongoing secondary prevention. Each care setting has unique opportunities for improving the quality of care provided and access to available professional and clinical care at the local level within a coordinated state-based system of care. In addition, there remains a need to identify disparities in stroke care and implement stroke interventions, such as community education and quality improvement activities, focused on priority populations.

Through the Paul Coverdell National Acute Stroke Program (PCNASP), CDC has been continuously worked to measure and improve acute stroke care using well-known quality improvement strategies coupled with frequent evaluation of results. There remains a national need to understand best practices of stroke systems of care, which includes prevention and awareness, use of EMS, in-hospital care, and rehabilitation and recovery. PCNASP awardees work statewide with participating hospitals, Emergency Medical Services (EMS) agencies, and other healthcare partners (e.g., community clinical partners) to improve quality of care for stroke patients. These efforts include implementing strategies to close the gap on stroke disparities, identifying effective stroke treatment centers, building capacity and infrastructure to ensure that stroke patients are routed to effective treatment centers in a timely manner, and improving transitions of care from the hospital to the next care setting.

During initial cooperative agreement cycles, PCNASP awardees focused on improving in-hospital quality of care (QoC) with technical assistance provided by CDC. Through lessons

learned during this process and other supporting evidence in the field, it has become evident that it is also important to examine pre- and post-hospital transitions of care to link the entire continuum of stroke care when improving QoC for stroke patients.

The PCNASP's current five-year cooperative agreement started on July 1, 2015 and includes nine state health department awardees and their selected partners (hospitals, EMS agencies, other healthcare facilities). This current funding period reflects additional emphasis on pre-hospital quality of care as well as the post-hospital transition of care setting from hospital to home or other healthcare facility. With technical assistance provided by CDC, awardees have worked on identifying and using data systems to systematically collect and report data on all three phases of the stroke care continuum and on hospital capacity.

PCNASP currently has OMB approval for the collection of pre-hospital (EMS), in-hospital, and post-hospital patient care data, as well as hospital inventory data (OMB Control No. 0920–1108, Exp. 09/30/2022). CDC plans to request a revision of this currently approved collection, with an extension of three years, reflecting a new Notice of Funding Opportunity (NOFO). The new PCNASP cooperative agreements will be expanded to include 13 awardees, which will be awarded on or about July 1, 2021.

In-hospital patient care data will continue to align with standards set by The Joint Commission (TJC) and the American Heart Association's Get With The Guidelines (GWTG) program. Estimated burden for the collection of in-hospital data will increase by a net increase of eight hours due to added program awardees under the new cooperative agreement. The average burden per response remains 30 minutes for awardees, for a total of 26 hours annually.

Data collection methods for pre-hospital care will continue to be collected similar to the two current methods, depending on awardees' access to data sources. These two methods are existing data systems currently available to awardees, including the AHA's GWTG and the National Emergency Medical Services Information System (NEMSIS). CDC has worked to reduce the overall number of required data elements and identified areas of alignment with AHA's GWTG. Total average burden will decrease due to the reduction in data elements under the new NOFO. Depending on the

awardees' access to data sources (GWTG or NEMSIS), the average burden per response will vary from 30 minutes to one hour. Thus, the burden for pre-hospital data is estimated to decrease from 60 to 46 burden hours annually.

Under scope of the new NOFO, patient level quality of care post-hospital data will not be collected. Post-stroke transitions of care, rehabilitation, follow-up, etc. will be assessed in alignment with existing CDC cooperative agreements. This is an effort to better align resources, funding, and community efforts already working to connect stroke patients with post-acute clinical care. As a result, burden for this collection and transmission will not be included in the overall estimation of average burden.

Primary data collection of hospital inventory data will continue to be collected to understand the capacity and infrastructure of the hospitals that admit and treat stroke patients. Each hospital will report inventory information to its PCNASP awardee annually. The average burden per response remains 30 minutes for hospitals. In addition, each PCNASP awardee prepares an annual aggregate hospital inventory file for transmission to CDC. The average burden of reporting hospital inventory information for each PCNASP awardee remains 8 hours per response. Based on current data and expected number of awardees under new NOFO, we are estimating the number of hospital partners per awardee to be 50 hospitals. Due to this increase in awardees, the estimated number of hospital respondents is anticipated to increase from 378 to 650. Thus, there is a net increase of 136 hours for hospitals to collect and transmit this data. The total burden for hospital inventory data is increasing from 189 to 325 hours annually.

These requested changes will result in a net increase in total average burden from 361 to 501 hours. All patient, hospital, and EMS provider data that is submitted to CDC by PCNASP awardees will be de-identified and occur through secure data systems. Proposed data elements and quality indicators may be updated over time to include new or revised items based on evolving recommendations and standards in the field to improve the quality of stroke care.

OMB approval is requested for three years. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
PCNASP Awardee	Hospital inventory	13	1	8	104
	In-hospital care data	13	4	30/60	26
	Pre-hospital care data	3	4	30/60	6
		10	4	1	40
PCNASP Hospital Partners	Hospital Inventory	650	1	30/60	325
Total					501

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.*

[FR Doc. 2020-26632 Filed 12-2-20; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Generic Clearance for Financial Reports Used for ACF Mandatory Grant Programs (OMB #0970-0510)

AGENCY: Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching generic clearance for Financial Reports used for ACF Mandatory Grant Programs (OMB #0970-0510). There are no changes to the proposed types of information collection or uses of data.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995,

ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information may be obtained and comments may be forwarded by emailing infocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF programs need detailed financial information from recipients that receive federal funds, such as grantees, to monitor various specialized cost categories within each program, to closely manage program activities, and to have sufficient financial information to enable periodic thorough and detailed audits. Information collected through the Federal Financial Report (Standard Form (SF)-425) provides general information, but does not provide program-specific information that is necessary for ACF program office decision making. This generic clearance allows ACF to collect program-specific financial information from mandatory grant programs.

Program offices use the information collected under this generic information collection to:

- Monitor program operations and prepare technical assistance and guidance, as needed.
 - Assist in the computation of the grant awards issued to each program's grantees or annual incentive payments (Child Support Enforcement Program only).
 - Determine that child support collections are being properly distributed (Child Support Enforcement Program only).
 - Produce annual financial and statistical reports as may be required by Congress and respond to periodic detailed inquiries from Congress.
- ACF may require an information collection approved under this generic from funding recipients in order to obtain or retain benefits.

Following standard OMB requirements for a generic information collection, ACF will submit a generic information collection request for each individual data collection activity under this generic clearance. Each request will include the individual form(s) and instructions, and a short overview of the proposed purpose and use of the data collected. OMB should review requests within 10 days of submission.

Respondents: ACF-funded mandatory grant programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Mandatory Grant Financial Reports	1,000	4	10	40,000

Estimated Total Annual Burden Hours: 40,000.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020-26636 Filed 12-2-20; 8:45 am]

BILLING CODE 4184-79-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Certification of Maintenance of Effort for Title III and Certification of Long Term Care Ombudsman Program Expenditures, OMB #0985-0009

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the proposed information collection, Certification of Maintenance

of Effort for Title III and Certification of Long Term Care Ombudsman Program Expenditures OMB #0985-0009.

DATES: Submit written comments on the collection of information by 11:59 p.m. (EST) or postmarked by January 4, 2021.

ADDRESSES: Submit written comments on the collection of information by:

(a) email to: OIRA_submission@omb.eop.gov, Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT:

Alice Kelsey, Administration for Community Living, Washington, DC 20201, (202) 795-7342, Alice.Kelsey@ACL.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

The Certification of Maintenance of Effort under Title III and Certification of Long-Term Care Ombudsman (LTCO) Program Expenditures provide statutorily required information regarding each state's contribution to programs funded under the Older

Americans Act and compliance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACL. This information will be used for Federal oversight of Title III Programs and Long Term Care Ombudsman Program expenditures.

Comments in Response to the 60-day Federal Register Notice

ACL published a 60-day Federal Register Notice in the **Federal Register** soliciting public comments on this request. The 60-day FRN published on August 19, 2020, Volume 85, Number 161, pages 51034-51035; ACL did not receive any public comments during the 60-day FRN period. The proposed data collection tools are on the ACL website for review and public comment, please visit <https://www.acl.gov/about-acl/public-input>.

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows: 56 State Agencies on Aging respond annually, and it takes each agency an average of one half (.5) hour per State agency per year to complete each form for a total of twenty-eight hours for all state agencies annually. The half hour estimate is based on prior years' experience with States in completing these forms.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Certification on Maintenance of Effort under Title III	56	1	.5	28
Certification of Long-Term Care Ombudsman Program Expenditures	56	1	.5	28
Total	112	2	1	56

Dated: November 27, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020-26601 Filed 12-2-20; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Title III Supplemental Form to Financial Status Report (SF-425), OMB #0985-0004

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the proposed information collection, Title III Supplemental Form to Financial Status Report (SF-425) OMB 0985-0004.

DATES: Submit written comments on the collection of information by 11:59 p.m. (EST) or postmarked by January 4, 2021.

ADDRESSES: Submit written comments on the collection of information by:

(a) Email to: OIRA_submission@omb.eop.gov, Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT:

Alice Kelsey, Administration for Community Living, Washington, DC 20201, (202) 795-7342, Alice.Kelsey@ACL.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The Title III

Supplemental Form to the Financial Status Report (SF-425) is used by ACL/AoA for all grantees to obtain a more detailed understanding of how projects funded under Title III of the Older Americans Act (OAA) of 1965, as amended, are being administered, and to ensure compliance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issued by the ACL. The level of data detail necessary is not available through the SF-425 form. The Supplemental Form

provides necessary details on non-federal required match, administration expenditures, and Long Term Care Ombudsman expenditures.

Comments in Response to the 60-Day Federal Register Notice

ACL published a 60-day **Federal Register** Notice in the **Federal Register** soliciting public comments on this request. The 60-day FRN published on August 19, 2020, Volume 85, Number 161, pages 51033–51034; ACL did not receive any public comments during the

60-day FRN period. The proposed data collection tools are on the ACL website for review and public comment, please visit <https://www.acl.gov/about-acl/public-input>.

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows: 56 State Units on Aging (SUA) respond semi-annually which have an average estimated burden of 2 hours per grantee for a total of 224 hours annually.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Title III Supplemental Form to the Financial Status Report	56	2	2	224
Total	56	2	2	224

Dated: November 27, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020-26602 Filed 12-2-20; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-2242]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document. Consistent with FDA's regulations, this notice is being published with less than 15 days prior to the date of the meeting based on a determination that convening a meeting of the Vaccines and Related Biological Products Advisory Committee as soon as possible is warranted. This **Federal Register** notice could not be published 15 days prior to the date of the meeting due to a recent

submission by Moderna, Inc., of a request for Emergency Use Authorization (EUA) for an investigational vaccine to prevent Coronavirus Disease 2019 (COVID-19) and the need for prompt discussion of such submission, given the COVID-19 pandemic.

DATES: *Meeting date:* The meeting will be held on December 17, 2020, from 9 a.m. Eastern Time to 6 p.m. Eastern Time.

Comment due date: Submit either electronic or written comments on this public meeting by December 16, 2020. **ADDRESSES:** Please note that due to the impact of this COVID-19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: <https://www.fda.gov/advisory-committees/about-advisory-committees/common-questions-and-answers-about-fda-advisory-committee-meetings>. The online web conference meeting will be available at the following link on the day of the meeting: <https://fda.yorkcast.com/webcast/Play/5cf9198bcc0745769b39c699850945911d>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2020-N-2242. The docket will close on December 16, 2020. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 16, 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 December 11, 2020, will be provided to the committee. Comments received after December 11, 2020, and by December 16, 2020, will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications, submissions, 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-2242 for “Vaccines and Related Biological Products; Notice of Meeting; Establishment of a Public Docket; 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.” 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.

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya or Kathleen Hayes, 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 or 301-796-7864, respectively; CBERAdvisoryCommittees@fda.hhs.gov; or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency’s website at <https://www.fda.gov/advisory-committees> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before joining the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will meet in open session to discuss EUA of the Moderna, Inc., COVID-19 Vaccine for the prevention of COVID-19 in individuals 18 years and older. EUA authority allows FDA to help strengthen the nation’s public health protections against chemical, biological, radiological, nuclear (CBRN) threats by facilitating the availability and use of Medical Countermeasures (MCMs) needed during public health emergencies. Under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3), FDA may allow unapproved medical products or unapproved uses of approved medical products to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by CBRN threat agents when certain statutory criteria have been met, including that there are no adequate, approved, and available alternatives. Additional information about EUAs can

be found at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, background material will be made publicly available on FDA’s website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at <https://www.fda.gov/advisory-committees/advisory-committee-calendar>. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before December 11, 2020, will be provided to the committee. Comments received after December 11, 2020, and by December 16, 2020, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 12 p.m. Eastern Time and 1 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 9, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 10, 2020.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301-796-4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Prabhakara

Atreya or Kathleen Hayes (*CBER AdvisoryCommittees@fda.hhs.gov*) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: <https://www.fda.gov/advisory-committees/about-advisory-committees/public-conduct-during-fda-advisory-committee-meetings> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 30, 2020.

Lauren K. Roth,
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–26704 Filed 12–1–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.

Date: December 10, 2020.

Time: 3:00 p.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: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, politisa@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: November 30, 2020.

Miguelina Perez,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26606 Filed 12–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging. The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: January 12–13, 2021.

Closed: January 12, 2021, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Open: January 13, 2021, 10:00 a.m. to 1:30 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Closed: January 13, 2021, 1:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, ksantora@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.nia.nih.gov/about/naca, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 30, 2020.

Miguelina Perez,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26607 Filed 12–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0003]

Agency Information Collection Activities: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

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.

DATES: Comments are encouraged and must be submitted (no later than January 4, 2021) 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 44915) on July 24, 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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651–0003.

Form Number: 7512, 7512A.

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: 19 U.S.C. 1552–1554 authorizes the movement of imported merchandise from the port of importation to another Customs and Border Protection (CBP) port prior to release of the merchandise from CBP custody. Forms 7512, “Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit” and 7512A, “Continuation Sheet,” allow CBP to exercise control over merchandise moving in-bond (merchandise that has not entered the commerce of the United States). Forms 7512 and 7512A are filed by importers, brokers or carriers, and they collect information such as the names of the importer and consignee, a description of the imported merchandise, and the ports of lading and unloading. Use of these forms is provided for by various provisions in 19 CFR to include 19 CFR 10.60, 19 CFR 10.61, 19 CFR 123.41, 19 CFR 123.42, 19 CFR 122.92, and 19 CFR part 18. These forms are accessible at: <http://www.cbp.gov/xp/cgov/toolbox/forms/>.

Estimated Number of Respondents: 6,200.

Estimated Number of Annual Responses per Respondent: 871.

Estimated Number of Total Annual Responses: 5,400,000.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 896,400.

Dated: November 30, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–26644 Filed 12–2–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0033]

Agency Information Collection Activities: Bonded Warehouse Proprietor’s 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.

DATES: Comments are encouraged and must be submitted (no later than January 4, 2021) 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 39757) on July 1, 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: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651-0033.

Form Number: CBP Form 300.

Current Action: CBP proposes to extend the expiration date of this information collection with an increase in the burden hours. There is no change to the information collected or CBP Form 300.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 300, *The Bonded Warehouse Proprietor's Submission*, is prepared annually by each warehouse proprietor, as mandated under 19 CFR 19.12 (g). The information on CBP Form 300 is used by CBP to evaluate warehouse activity for the year. This form must be completed within 45 days from the end of the business year, pursuant to the provisions of the Tariff Act of 1930, as amended, 19 U.S.C. 66, 1311, 1555, 1556, 1557, 1623 and 19 CFR 19.12. The information collected on this form helps CBP determine all bonded merchandise that was entered, released, and manipulated in the warehouse. CBP Form 300 is accessible at <https://www.cbp.gov/document/>

forms/form-300-bonded-warehouse-proprietors-submission.

Estimated Number of Respondents: 1,980.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,980.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 19,800.

Dated: November 30, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020-26650 Filed 12-2-20; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection [1651-0073]

Agency Information Collection Activities: Notice of Detention

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 January 4, 2021) 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 59542) on September 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: Notice of Detention.

OMB Number: 1651-0073.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Customs and Border Protection (CBP) may detain

merchandise when it has reasonable suspicion that the subject merchandise may be inadmissible but requires more information to make a positive determination. If CBP decides to detain merchandise, a Notice of Detention is sent to the importer or to the importer's broker/agent no later than 5 business days after the decision to detain the merchandise is made. The Notice must state that merchandise has been detained, the specific reason for the detention, the anticipated length of the detention, the nature of the tests or inquiries to be conducted, and the nature of any information that could be supplied to CBP that may accelerate the disposition of the detention. The recipient of this notice may respond by providing information to CBP in order to facilitate the determination for admissibility or may ask for an extension of time to bring the merchandise into compliance. Notice of Detention is authorized by 19 U.S.C. 1499 and provided for in 19 CFR 151.16, 133.21, 133.25, and 133.43.

Estimated Number of Respondents: 1,350.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,350.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,700.

Dated: November 30, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020-26643 Filed 12-2-20; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0064]

Agency Information Collection Activities: Create/Update Importer Identity Form (CBP Form 5106)

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.

DATES: Comments are encouraged and must be submitted (no later than January 4, 2021) 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 59815) on September 23, 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: Create/Update Importer Identity Form (CBP Form 5106).

OMB Number: 1651-0064.

Form Number: CBP Form 5106.

Current Action: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The collection of the information on the "Create/Update Importer Identity Form", commonly referred to as the "CBP Form 5106" is the basis for establishing bond coverage, release and entry of merchandise, liquidation and the issuance of bills and refunds. Members of the trade community use the Create/Update Importer Identification Form to register an entity as an Importer of Record (IOR) on the Automated Commercial Environment. Registering as IOR with CBP is required if an entity intends to transact Customs business and be involved as an importer, consignee/ultimate consignee, any individual or organization involved as a party, such as 4811 party, or sold to party on an informal or formal entry. The number used to identify an IOR is either an Internal Revenue Service (IRS) Employer Identification Number (EIN), a Social Security Number (SSN), or a CBP-Assigned Number. By collecting, certain information from the importer enables CBP to verify the identity of the importers, meeting IOR regulatory requirements for collecting information. 19 CFR 24.5.

Importers, each person, business firm, government agency, or other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the ultimate consignee for whom an entry is being made.

CBP Form 5106 is authorized by 19 U.S.C. 1484 and 31 U.S.C. 7701, and provided for by 19 CFR 24.5. The

current version of the form is accessible at: <https://www.cbp.gov/document/forms/form-5106-importer-id-input-record>.

Estimated Number of Respondents: 300,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 300,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 225,000.

Dated: November 30, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020-26642 Filed 12-2-20; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-ES-2020-N139; FF09E00000 190 FXES11130900000; OMB Control Number 1018-0094]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species

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 information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 4, 2021.

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 1018-0094 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 July 6, 2020, we published in the **Federal Register** (85 FR 40309) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on September 4, 2020. We received one comment in response to that notice:

Comment 1: The respondent commented on the Southeast Geographic Area Bat Reporting Form (3-202-55c), the Mussel Reporting Form (3-2523), and the Bumblebee Reporting Form (3-2526). They supported the southeast bat reporting form, stating their opinion that the form is useful, and an improvement over their State's reporting form. They also recommended providing forms in an electronic input format for use in the field.

Agency Response to Comment 1: We appreciate the respondent's response on the utility of the Southeast Geographic Area Bat Reporting Form. The respondent is not within the geographic area where they would be using the Mussel or Bumblebee Reporting Forms, so their comments are not germane to the information collection at this time. We will update the form names accordingly to reduce confusion. At this time, we are not exploring creating an electronic input data form, but we will consider this as a potential streamlining tool for future information collection renewals.

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

information collection request (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 Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) provides a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the ESA are no longer necessary. Section 10(a)(1)(A) of the ESA authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(a)(1)(B) of the ESA authorizes us to issue permits if the taking is incidental to the carrying out of an otherwise lawful activity. ESA section 10(d) requires that such permits be applied for in good faith and, if granted, that the permit not operate to the disadvantage of endangered species, and that the permit be consistent with the purposes of the ESA.

Our regulations implementing the ESA are in chapter I, subchapter B of title 50 of the Code of Federal

Regulations (CFR) (50 CFR 13 and 50 CFR 17). The regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited. Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.)

We collect information associated with application forms to determine the eligibility of applicants for permits requested in accordance with the criteria in section 10 of the ESA. The Service uses the following permit application forms for activities associated with native endangered and threatened species:

- Form 3–200–54, *Enhancement of Survival Permits Associated with Safe Harbor Agreement & Candidate Conservation Agreement with Assurances*;
- Form 3–200–56, *Incidental Take Permits Associated with a Habitat Conservation Plan*;
- Form 3–200–59, *Recovery Permit Application Form*; and
- Form 3–200–60, *Interstate Commerce Application Form*.

On June 6, 2020, we requested and obtained approval from OMB to split the previously approved Form 3–200–55 to two separate permit applications (asking the applicant to select either Recovery Permit or Interstate Commerce) to reduce the overall form length and confusion. Based on which permits are issued, we also require reports to monitor activities associated with permitted activities in accordance with their permits issued based on 50 CFR 17. Annual reports associated with permits are tailored to a specific activity based on the requirements for specific types of permits. In some cases, we developed specific information collection forms to facilitate and standardize the reporting and review, and to facilitate development of electronic forms and electronic reporting and retrieval of that information.

Annual reporting of the results subsequent to the activity authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) and 10(a)(1)(B) of the ESA and its implementing regulations at 50

CFR 17). These reports allow us to evaluate the success of the project, formulate further research, and develop and adjust management and recovery plans for the species. We currently use the following reports specific to particular species (and regions, where appropriate):

- Form 3–202–55b, *Region 3 [Midwest] Bat Reporting Spreadsheet*;
- Form 3–202–55c, *Region 4 [Southeast] Bat Reporting Spreadsheet*;
- Form 3–202–55d, *Region 5 [Northeast] Bat Reporting Spreadsheet*;
- Form 3–202–55e, *Region 6 [Mountain-Prairie] Bat Reporting Spreadsheet*;
- Form 3–202–55f, *Non-Releasable Sea Turtle Annual Report*; and
- Form 3–202–55g, *Sea Turtle Rehabilitation Annual Report*.

Additionally, we require that the following notifications be made to the Service:

- Private landowners who have an Enhancement of Survival Permit (and accompanying Safe Harbor Agreement or Candidate Conservation Agreement with Assurances) must notify us if their land management activities incidentally take a listed or candidate species covered under their permit.
- We issue Enhancement of Survival Permits to landowners, and their name is printed on the permit. If ownership of the land changes, this permit does not automatically transfer to the new landowner. Therefore, we ask the permittee to notify us if there is a change in land ownership so that we may update the permit; and
- If a recovery or interstate commerce permit authorizes activities that include keeping wildlife in captivity, we ask the permittee to notify us if any of the captive wildlife escape.

Proposed Revisions

Although the Service announced its intention to seek OMB approval of a new form 3–2531, General Recovery Permit Reporting Form, in the published 60-day **Federal Register** notice (FRN), we no longer plan to proceed with this form. Should the Service decide to move forward with this new form at a later date, we will initiate a new revision to this collection by publishing the required 60-day FRN to solicit comments from the public in accordance with 5 CFR 1320.

Revised Forms

The Service is proposing to revise FWS Forms 3–200–54, “*Enhancement of Survival Permits Associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances*,” and 3–200–56, “*Incidental*

Take Permits Associated with a Habitat Conservation Plan.” We propose to remove program contact information currently in both application form, and instead link to a permanent website. This website will be frequently maintained and will provide the public with the most accurate contact information.

The Service is proposing to revise and rename the following five forms associated with bat surveys:

- Form 3–202–55a, *U.S. Fish and Wildlife Service Geographic Area: Southwestern Bat Reporting Form*;
- Form 3–202–55b, *U.S. Fish and Wildlife Service Geographic Area: Midwestern Bat Reporting Form*;
- Form 3–202–55c, *U.S. Fish and Wildlife Service Geographic Area: Southeastern Bat Reporting Form*;
- Form 3–202–55d, *U.S. Fish and Wildlife Service Geographic Area: Northeastern Bat Reporting Form*; and
- Form 3–202–55e, *U.S. Fish and Wildlife Service Geographic Area: Plains/Rockies Bat Reporting Form*.

The Service is proposing changes to these forms to address comments received. These changes include adding columns to increase flexibility for user data entry, to increase accuracy of Global Positioning System data, and to add three fields specifically requested by State natural resource agencies in order to unify their State databases with that of the Service. These additions eliminate the need for filing a separate reporting form with the State and reduce the overall reporting burden on the respondents. Completion of the information on the forms regarding the activity(ies) to be authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) of the ESA and its implementing regulations at 50 CFR 17).

Note: Form 3–202–55a, “*U.S. Fish and Wildlife Service Geographic Area: Southwestern Bat Reporting Form*” was added in conjunction with the realignment of the geographical areas covered in the revisions to the geographical areas covered by the above referenced 3–202–55 series bat reporting forms.

New Forms

The Service is proposing to revise this collection to request OMB approval of the following seven new forms:

- Form 3–2523, *Midwest Geographic Area: Freshwater Mussel Reporting Form*;
- Form 3–2526, *Midwest Geographic Area: Bumble Bee Reporting Form*;
- Form 3–2530, *California/Nevada/Klamath Basin, OR Recovery Permit Annual Summary Report Form*;

- Form 3–2532, *U.S. Fish and Wildlife Service Geographic Area: Alaska Bat Reporting Form*;
- Form 3–2533, *U.S. Fish and Wildlife Service Geographic Area: Northwestern Bat Reporting Form*; and
- Form 3–2534, *U.S. Fish and Wildlife Service Geographic Area: Western Bat Reporting Form*.

Annual reporting of the results subsequent to the activity authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) and 10(a)(1)(B) of the ESA and its implementing regulations at 50 CFR 17). The Service designed the forms to facilitate the electronic reporting specifically for each species. The Service will use the reported data to evaluate the success of the permitted project, formulate further research, and develop and adjust management and recovery plans for the species. The data will also inform 5-year reviews and Species Status Assessments conducted under the ESA.

ePermits Initiative

The Service's new ePermits initiative is an automated permit application system that will allow the agency to move toward a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits initiative is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This new system will enhance the user experience by allowing users to enter data from any device that has internet access, including personal computers (PCs), tablets, and smartphones. It will also link the permit applicant to the *Pay.gov* system for payment of associated permit application fees, where applicable.

Upon completion of the new ePermits system, applicants applying for Recovery, Interstate Commerce, Habitat Conservation Plan Incidental Take Permits, Candidate Conservation Agreements with Assurances, and Safe Harbor Agreements Enhancement of Survival Permits will have the opportunity to apply directly online through a secure, web-based platform.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR 10, 13, and 17.

OMB Control Number: 1018–0094.

Form Numbers: FWS Forms 3–200–54, 3–200–56, 3–200–59, 3–200–60, 3–202–55a through 3–202–55g, 3–2523

(new), 3–2526 (new), 3–2530 (new), and 3–2532 through 3–2534 (new).

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 4,258.

Total Estimated Number of Annual Responses: 4,258.

Estimated Completion Time per Response: Varies from 30 minutes to 2,080 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 119,949.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion, annually, one time.

Total Estimated Annual Nonhour Burden Cost: \$54,910 for fees associated with permit applications and amendments.

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: November 30, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–26614 Filed 12–2–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2020–N138;
FXES11130600000–201–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by January 4, 2021.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (e.g., TE123456):

- *Email:* permitsR6ES@fws.gov.

- *U.S. Mail:* Marjorie Nelson, Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT:

Kathy Konishi, Recovery Permits Coordinator, Ecological Services, 303–236–4224 (phone), or permitsR6ES@fws.gov (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits.

Accordingly, we invite local, State, and Federal agencies; Tribes; and the public to submit written data, view, or

arguments with respect to these applications. The comments and recommendations that will be most

useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application number	Applicant	Species	Location	Take activity	Permit action
TE067482-2	Colorado Department of Transportation, Durango, CO.	• Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	NE	Pursue for presence/absence surveys, nest monitoring, habitat management.	Renew.
TE059369-3	Colorado Natural Heritage Program, Fort Collins, CO.	• New Mexico meadow jumping mouse (<i>Zapus hudsonius luteus</i>).	CO	Pursue, capture, handle, measure, and release for presence/absence surveys.	Renew.
TE81397D-0	University of Northern Colorado, Greeley, CO.	• <i>Eriogonum pelinophilum</i> (Clay-loving wild buckwheat). • <i>Astragalus osterhoutii</i> (Osterhout milkvetch). • <i>Penstemon penlandii</i> (Pendland beardtongue). • <i>Penstemon haydenii</i> (Blowout penstemon)	CO	Remove and reduce to possession; seed, fruit collection for genetic studies; voucher sample collection.	New.
TE085324-3	Wyoming Natural Diversity Database, Laramie, WY.		WY	Remove and reduce to possession; seed, fruit collection for genetic studies; voucher sample collection; propagation and seed bank research; habitat restoration and enhancement prior to reintroduction activities.	Amend.
TE053961-2	Omaha's Henry Doorly Zoo and Aquarium, Omaha, NE.	• Salt Creek tiger beetle (<i>Cicindela nevadica lincolniensis</i>). • Wyoming toad (<i>Anaxyrus baxteri</i>).	NE, WY	Hold in captivity for captive breeding and propagation; pursue, capture, handle, measure, and release for presence/absence surveys; reintroduction activities.	Amend.
TE35101D-0	Schmueser Gordon Meyer, Inc. (SGM), Glenwood Springs, CO.	• Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	CO	Pursue for presence/absence surveys, nest monitoring, habitat management.	New.
PER0001907	Vosburgh, Timothy, Anaconda, MT.	• Black-footed ferret (<i>Mustela nigripes</i>)	MT	Presence/absence surveys, capture, handle, chip implant, tattoo, measure, vacinate, and release for reintroduction activities.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service, Department of the Interior Unified Regions 5 and 7.

[FR Doc. 2020-26605 Filed 12-2-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

[212D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25; OMB Control No. 1090-NEW]

Agency Information Collection Activities; Watercraft Inspection Decontamination Regional Data-Sharing for Trailered Boats

AGENCY: Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Department of the Interior (Interior), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 1, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mr. Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240, by phone 202-208-7072; or by email to DOI-PRA@ios.doi.gov. Please reference OMB Control Number 1090-NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo by email at DOI-PRA@ios.doi.gov, or by telephone at (202) 208-7072. Individuals who are hearing or speech impaired may call the Federal Relay Service at (800) 877-8339 for TTY assistance. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Interior is authorized by the Lacey Act (18 U.S.C. 42, 16 U.S.C. 3371–3378 *et seq.*), the Fish and Wildlife Coordination Act (U.S.C. 661 *et seq.*, as amended by John D. Dingell, Jr. Conservation, Management, and Recreation Act, Title 25 U.S.C. Code 3701, *et seq.* sec. 7001(b)(2), Pub. L. 116–9) and the Federal Land Policy and Management Act of 1976, as Amended, 43 U.S.C. 1701, *et seq.*, to collect this information. Interior is requesting approval to collect information from boaters entering or exiting water areas managed by various bureaus under Interior. The data will help document

the presence and evaluate any risks associated with the unintentional introduction of quagga/zebra mussels and other aquatic invasive species in waters managed by the various bureaus under Interior. Collection of this information is required for all watercrafts entering and exiting waters managed by the various bureaus under Interior that have an active watercraft inspection and decontamination program.

The Regional Watercraft Inspection Decontamination Data Sharing System (Regional Database) was developed by the State of Colorado and is currently being utilized by numerous entities within the Western Regional Panel on Aquatic Nuisance Species (WRP). The National Park Service, U.S. Fish and Wildlife Service, Bureau of Reclamation, and Bureau of Land Management are part of the WRP and the regional network of state and federal agencies working to prevent the spread of quagga/zebra mussels and other aquatic invasive species (AIS) in the western U.S. The success of this multi-agency effort relies in part upon timely availability of accurate information related to trailered boats at watercraft inspection/decontamination (WID) stations. The NPS already has OMB approval to use this database but that collection will be discontinued and NPS will be rolled into this Department wide information collection once approved. The Regional Database makes this information available to staff at WID stations, allowing them to assess risk associated with quagga/zebra mussels and other AIS on trailered boats. States are asking federal partner agencies to begin using the database at their sites with WID programs.

Using the Regional Database requires that WID personnel ask boaters four questions and enter the responses via an app on a smartphone or tablet. Two of the four questions vary depending on whether a boater is entering or exiting a waterbody; the other two questions are the same for entering and exiting boaters:

Upon Entering:

1. Has the boat been out of the state in the last 30 days?
2. Has the boat been in any other waters in the last 30 days?

Upon Exiting:

1. What is the destination for the boat?
2. Where will the boat be launched next?

Upon Entering and Exiting:

1. What compartments or containers on the boat, including ballast tanks, hold water?

2. Does the boater have any live aquatic bait?

Title of Collection: Watercraft Inspection Decontamination Regional Data-sharing for Trailered Boats.

OMB Control Number: 1090–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public:

Individuals/household; private sector; and State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 335,602.

Estimated Completion Time per Response: 4 minutes.

Total Estimated Number of Annual Burden Hours: 22,486 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion. (Upon entry, exit, or both)

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–26604 Filed 12–2–20; 8:45 am]

BILLING CODE 4334–CC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–31214; 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 November 21, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 18, 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 November 21, 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:

CALIFORNIA

Alameda County

Hotel Menlo, 344 13th St., Oakland, SG100005984

COLORADO

Bent County

Boggsville (Boundary Increase), 2 mi. south of Las Animas, east of CO 101, Las Animas vicinity, BC100005980

Gilpin County

Frontenac and Aduddell Mine Complex, (Mining Industry in Colorado, MPS), 0.25 mi. southwest of jct. of Church Placer and Pewabic Mountain Rds., Russell Gulch vicinity, MP100005981

ILLINOIS

Crawford County

Allen, Dr. Arthur W., Home, 11266 North Trimble Rd., Robinson, SG100005966

Douglas County

Henson House, 103 North Henson Rd., Villa Grove, SG100005967

Jersey County

Jerseyville First Presbyterian Church, 400 South State St., Jerseyville, SG100005968

Winnebago County

Rockford Woman's Club, 323 Park Ave., Rockford, SG100005971

MARYLAND

Frederick County

Ceres Bethel AME Church, Gapland Rd., approx. 2 mi. west of Burkittsville, Burkittsville vicinity, SG100005982

MICHIGAN

Wayne County

United States Postal Service Roosevelt Park Station, 1800 18th St., Detroit, SG100005983

NEW YORK

Madison County

Oneida Community Limited Administration Building, 181 Kenwood Ave., Oneida, SG100005960

Washington County

Greenwich District School No. 11, 4 Ryan Rd., Center Falls, SG100005961

NORTH CAROLINA

Granville County

Oxford Historic District (Boundary Increase and Decrease), (Granville County MPS), Roughly bounded by Alexander and Sunset Aves., 3rd, Belle, Broad, Cherry, College, Devin, Franklin, Front, Gilliam, Granville, Henderson, Hillsboro, Lanier, Main, New College, Raleigh, and West Sts., and Martin Luther King Jr. Blvd., Oxford, BC100005974

Hertford County

Winton Historic District, Roughly bounded by west side of North King St., north of Cross St., North Murfree, East Weaver, and West Jordan Sts., Winton, SG100005976

Surry County

Country Club Estates Historic District, Includes portions of Club View Dr., Country Club Rd., Fairway Ln., and Greenhill Rd., Mount Airy, SG100005977
Lebanon Hill Historic District, Roughly bounded by Howard, Mitchell, South, and Woodruff Sts., and the Mount Airy Historic District, Mount Airy, SG100005978

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

MARYLAND

Kent County

Piney Grove, 7281 Wilkins Ln., Chestertown, SG100005962

Comment period: 3 days

A request to move has been received for the following resource:

NORTH CAROLINA

Alamance County

Menagerie Carousel, Burlington City Park, South Main St., Burlington, MV82003420

Additional documentation has been received for the following resources:

COLORADO

Bent County

Boggsville (Additional Documentation), South of Las Animas on CO 101, Las Animas vicinity, AD86002841

ILLINOIS

Wayne County

Turney-Hall House (Additional Documentation), 502 SE 4th St., Fairfield, AD100002329

Will County

Plainfield Halfway House (Additional Documentation), 503 Main St., Plainfield, AD80001421

NORTH CAROLINA

Granville County

Oxford Historic District (Additional Documentation), (Granville County MPS), Roughly bounded by College, New College, Gilliam, Raleigh, Front, Broad, Goshen, and Hayes Sts., Oxford, AD88000403

Authority: Section 60.13 of 36 CFR part 60.

Dated: November 24, 2024.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2020–26616 Filed 12–2–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Subcutaneous Drug Development & Delivery Consortium, Inc.

Notice is hereby given that, on October 26, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Subcutaneous Drug Development & Delivery Consortium, Inc. (“Subcutaneous Drug Development & Delivery Consortium, Inc.”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identity of the parties to the venture are: Eli Lilly and Company, Indianapolis, IN; Halozyme, Inc., San Diego, CA; Bristol Myers Squibb, New Brunswick, NJ; AstraZeneca, San Francisco, CA; and Amgen Inc., Thousand Oaks, CA. The general area of Subcutaneous Drug Development & Delivery Consortium, Inc.’s planned activity is (a) transform patient care and improve patient outcomes by identifying and addressing key gaps, unmet needs and actionable issues in the dynamic subcutaneous (“SC”) drug delivery and development landscape, including through research, publication of industry analyses, and the

development of SC-related manuscripts, models, standards and other guidance materials (collectively, "Guidance"); (b) provide a venue for reviewing, developing, maintaining and supporting the Guidance; (c) promote the Guidance worldwide; (d) provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Guidance; (e) operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in the Guidance, and products or services designed in compliance therewith; and (f) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Membership in Subcutaneous Drug Development & Delivery Consortium, Inc. remains open and Subcutaneous Drug Development & Delivery Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020-26626 Filed 12-2-20; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-750]

Bulk Manufacturer of Controlled Substances Application: Janssen Pharmaceuticals Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Janssen Pharmaceuticals Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 1, 2021. Such persons may also file a written request for a hearing on the application on or before February 1, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on November 11, 2020, Janssen Pharmaceuticals Inc., 1440 Olympic Drive, Athens, Georgia, 30601-1645, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Oripavine	9330	II
Thebaine	9333	II
Tapentadol	9780	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020-26651 Filed 12-2-20; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-0051]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Final Disposition Report (R-84), With Supplemental Questions R-84(a), R-84(b), R-84(c), R-84(d), R-84(e), R-84(f), R-84(g), R-84(h), R-84(i), and R-84(j)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ), 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 January 4, 2021.

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 agencies 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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Final Disposition Report.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection:

Agency form number: R-84, with supplemental questions R-84(a), R-84(b), R-84(c), R-84(d), R-84(e), R-84(f), R-84(g), R-84(h), R-84(i), and R-84(j).

Sponsoring component: Department of Justice, Criminal Justice Information Services Division.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* City, county, state, federal and tribal law enforcement agencies. This collection is needed to report completion of an arrest event. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 75,605 respondents will complete each form within approximately 5 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 81,074.75 total annual burden hours associated with this collection.

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, Suite 3E.405B, Washington, DC 20530.

Dated: November 30, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020-26634 Filed 12-2-20; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Colorado and Kentucky

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Colorado and Kentucky.

The following changes have occurred since the publication of the last notice regarding the State's EB status:

- Colorado's 13-week insured unemployment rate (IUR) for the week ending November 7, 2020, was 4.90 percent, falling below the 5.00 percent threshold necessary to remain "on" EB. Therefore, the EB period for Colorado ends on November 28, 2020. The state will remain in an "off" period for a minimum of 13 weeks.

- Kentucky's 13-week IUR for the week ending November 7, 2020, was 4.67 percent, falling below the 5.00 percent threshold necessary to remain "on" EB. Therefore, the EB period for Kentucky ends on November 28, 2020. The state will remain in an "off" period for a minimum of 13 weeks.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the state by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a

written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13 (c)).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S-4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693-2991 (this is not a toll-free number) or by email: Stengle.Thomas@dol.gov.

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020-26647 Filed 12-2-20; 8:45 am]

BILLING CODE 4510-FW-P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Museums for All

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This notice proposes the renewal clearance of the *Museums for All* which includes clearance for Registration and Report Forms. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before January 1, 2021.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316.

FOR FURTHER INFORMATION CONTACT: Christopher J. Reich, Chief Administrator, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024-2135. Mr. Reich can be reached by Telephone: 202-653-4685, or by email at creich@imls.gov, or by teletype (TTY/TDD) for persons with hearing difficulty at 202-653-4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to work together to transform the lives of individuals and communities. To learn more, visit www.imls.gov.

Current Actions: This notice proposes the clearance of *Museums for All Registration and Report Forms*.

The 60-day Notice was published in the **Federal Register** on 9/18/2020 (85 FR 58400). The agency received no comments in response to the posting.

The purpose of this collection is to support the administration of *Museums for All*, a program designed to increase access to museums for underserved audiences by inviting museums to allow Electronic Benefit Transfer (EBT) card holders to receive reduced-price admission to their facilities. This information collection will obtain

registration data from participating museums, such as institution-level name, mailing address, web address, operating budget, and attendance, as well as contact information for the staff members administering the program. Additional reporting information, such as program attendance, sponsor involvement, partnerships, and feedback regarding experience with the program, will be collected on a quarterly basis to assess implementation of the program components, the efficacy of program materials, and the impact of the program.

Agency: Institute of Museum and Library Services.

Title: Museums for All.

OMB Control Number: 3137-0089.

Agency Number: 3137.

Affected Public: Museums.

Total Number of Respondents: 734.

Frequency of Response: Once per request for the Registration Form; four times per year for the Report Form.

Average Hours per Response: Registration Form: 0.5 hour; Report Form: 1 hour.

Total Burden Hours: 42 hours for the Registration Form; 2,600 hours for the Report Form.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: \$1,194.06 for the Registration Form; \$73,918.00 for the Report Form.

Total Annual Federal Costs: \$0.

Dated: November 30, 2020.

Kim Miller,

*Senior Grants Management Specialist,
Institute of Museum and Library Services.*

[FR Doc. 2020-26625 Filed 12-2-20; 8:45 am]

BILLING CODE 7036-01-P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Submission for Renewal of a Previously Approved Information Collection: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Suitability Executive Agent Programs, is notifying the general public and other federal agencies that OPM proposes to request the Office of Management and Budget (OMB) to renew a previously-approved information collection, Questionnaire for Public Trust Positions (SF 85P) and

Supplemental Questionnaire for Selected Positions (SF 85P-S).

DATES: Comments are encouraged and will be accepted until January 4, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget by the following method: <http://www.regulations.gov>. Follow the instructions for submitting comments. All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from member of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Lisa M. Loss, (202) 606-7017, U.S. Office of Personnel Management, Suitability Executive Agent Programs, P.O. Box 699, Slippery Rock, PA 16057, or sent by email to SuitEA@opm.gov.

SUPPLEMENTARY INFORMATION:

This notice announces that OPM has submitted to OMB a request for renewal of a previously-approved information collection, control number 3206-0258, Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S). The public has an additional 30-day opportunity to comment. The Questionnaire for Public Trust Positions, SF 85P and Supplemental Questionnaire for Selected Positions, SF 85P-S, are information collections completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract (SF 85P only). The collections are used as the basis of information for background investigations to establish that such persons are:

- Suitable for employment or retention in Federal employment in a public trust position or fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position;
- Fit to perform work on behalf of the Federal Government pursuant to the Government contract, when the duties to be performed are equivalent in degree of trust reposed in the individual to a public trust position;

- Eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a public trust position.

For applicants, the SF 85P and SF 85P-S are to be used only after a conditional offer of employment has been made. The SF 85P-S is supplemental to the SF 85P and is used only as approved by OPM, for certain positions such as those requiring carrying of a firearm. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that houses the SF 85P and SF 85P-S. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

OPM recommends renewal of the form without any proposed changes, except to underlying authorities, which have been revised in the period since the last renewal, and the Privacy Act Information Statement, to acknowledge the transfer of background investigations files from OPM to the Defense Counterintelligence and Security Agency. No other changes are recommended at this time. Ongoing assessments will occur to ensure the SF 85P and SF 85P-S reflect and collect pertinent information for the investigative process and align with governing policies, rules, and regulations requiring use of these forms.

The 60 day **Federal Register** Notice was published on September 16, 2020 (85 FR 57890). No comments were received.

Analysis

Agency: Office of Personnel Management, Suitability Executive Agent Programs.

Title: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P-S).

OMB Number: 3206-0258.

Affected Public: Individuals.

Number of Respondents: 112,894 (SF 85P); 11,717 (SF 85P-S).

Estimated Time per Respondent: 155 minutes (SF 85P); 10 minutes (SF 85P-S).

Total Burden Hours: 282,235 (SF 85P); 1,953 (SF 85P-S).

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020-26511 Filed 12-2-20; 8:45 am]

BILLING CODE 6325-66-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-31 and CP2021-32; MC2021-32 and CP2021-33; MC2021-33 and CP2021-34; MC2021-34 and CP2021-35; MC2021-35 and CP2021-36; MC2021-36 and CP2021-37]

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 a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 7, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal

Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2021-31 and CP2021-32; *Filing Title:* USPS Request to Add Parcel Select Contract 38 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Curtis E. Kidd; *Comments Due:* December 7, 2020.

2. *Docket No(s):* MC2021-32 and CP2021-33; *Filing Title:* USPS Request to Add Parcel Select Contract 39 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Curtis E. Kidd; *Comments Due:* December 7, 2020.

3. *Docket No(s):* MC2021-33 and CP2021-34; *Filing Title:* USPS Request to Add Parcel Select Contract 40 to

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Curtis E. Kidd; *Comments Due:* December 7, 2020.

4. *Docket No(s):* MC2021-34 and CP2021-35; *Filing Title:* USPS Request to Add Parcel Select Contract 41 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* December 7, 2020.

5. *Docket No(s):* MC2021-35 and CP2021-36; *Filing Title:* USPS Request to Add Parcel Select Contract 42 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* December 7, 2020.

6. *Docket No(s):* MC2021-36 and CP2021-37; *Filing Title:* USPS Request to Add Parcel Select Contract 43 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* December 7, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020-26637 Filed 12-2-20; 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90525; File No. SR–LCH SA–2020–005]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Clearing of Options on Index Credit Default Swaps in Respect of North American Indices (More Specifically, CDX.NA.IG and CDX.NA.HY)

November 27, 2020.

I. Introduction

On September 24, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4, ² a proposed rule change to permit the clearing of options on index credit default swaps (“CDS”) in respect of North American indices (more specifically, CDX.NA.IG and CDX.NA.HY) (“CDX Swaptions”). The proposed rule change was published for comment in the **Federal Register** on October 13, 2020. ³ The Commission did not receive comments on the proposed rule change. On November 27, 2020, LCH SA filed Partial Amendment No. 1 to the proposed rule change. ⁴ The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, “proposed rule change”), on an accelerated basis.

II. Description of the Proposed Rule Change

LCH SA is proposing to amend its rules to permit the clearing of CDX Swaptions. ⁵ As LCH SA currently clears

options in which certain European index CDS are the underlying asset, *i.e.*, CDS on Markit iTraxx® Europe Index and iTraxx® Crossover Index (“iTraxx Swaptions”), the proposed introduction of CDX Swaptions requires minimal changes to extend LCH SA’s existing risk framework to this new product. ⁶ As described below, LCH SA is proposing such changes in its (i) Reference Guide: CDS Margin Framework (“CDSClear Margin Framework”); ⁷ (ii) CDS Clearing Supplement (“Supplement”); and (iii) CDS Clearing Procedures (“Procedures”). ⁸ In addition, LCH SA proposes to make other changes unrelated to the introduction of CDX Swaptions, including changes to the Vega Margin that will apply to both iTraxx Swaptions and CDX Swaptions, which are also described below. ⁹

A. Proposed Changes With Respect to CDX Swaptions

1. CDSClear Margin Framework

LCH SA is proposing to amend Paragraph 2.3.4, which concerns the Daily Contributions Assessment, to include CDX Swaptions. The Daily Contributions Assessment is the primary method by which LCH SA obtains Members’ daily price contributions to update implied volatilities on options. These price contributions, in turn, would be used by LCH SA for marking the options book, if certain conditions are met. The proposed change to the Daily Contributions Assessment will require Members to make price contributions on CDX Swaptions for all strikes that are multiples of 2.5 basis points for CDX.NA.IG and 0.5 cents for CDX.NA.HY of a given expiry when Members have at least one open position on one strike for that expiry. This change would ensure that daily updates are available for LCH SA’s implied volatility measurements. Without this change, LCH SA would rely on Markit’s composite prices or use pre-defined rules to fill in missing data in accordance with section 2.3.3.2 (*Missing Data Points*) of the CDSClear Margin Framework, consistent with what LCH does for other options that it currently clears.

LCH SA is also proposing changes in paragraph 4.1.9 of the CDSClear Margin Framework, as outlined below:

(a) LCH SA would add a comment to highlight that although the given example pertains to iTraxx Swaptions, the same logic applies to CDX Swaptions.

(b) In the description of Step 2 regarding the calculation of the cost of vega hedging, LCH SA would specify that the volume of delta neutral Swaption notional that it can unwind in a day will be derived from a clearing member survey.

(c) In the description of Step 3 regarding the contributions to the macro-hedge cost, LCH SA would specify that the volume of principal index 5YR Off-The-Run-1 series Swaption notional that one can reasonably unwind in a day is defined in the previous section on indices. LCH SA would also add CDX Swaptions to the description of the variable beta (“β”) that defines an index sub-family, either Main or Xover for iTraxx and IG or HY for CDX.

(d) In the description of Step 4 regarding the final Liquidity Charge and to aggregate the costs of delta hedging and vega hedging, LCH SA would add a formula to clarify that the existing methodology would also apply and to incorporate the Foreign Exchange rate into the final Liquidity Charge formula to address CDX Swaptions. LCH SA determined that no changes are required to its liquidity and concentration risk margin methodology, as set forth in the CDSClear Margin Framework, in connection with clearing CDX Swaptions. ¹⁰

Currently, in the event of a clearing member default and the calculation of a liquidity charge, LCH SA attempts to source hedges from the CDS part of the defaulting member’s portfolio using a delta-hedging algorithm to ensure minimal hedging costs before sourcing the hedges from the market. ¹¹ In this connection, LCH SA proposes to amend Section 4.1.9 to reflect use of a member survey to determine the volume of the delta neutral package of the selected option that can be reasonably unwound per day. LCH SA is also proposing additional language to confirm how currency conversion from USD to EUR will apply in circumstances where options priced in USD form part of the delta-hedged package.

Paragraph 4.2 sets forth the accrued coupon liquidation risk margin (*i.e.*, margin covering the risk that a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Options on Index Credit Default Swaps in Respect of North American Indices (More Specifically, CDX.NA.IG and CDX.NA.HY), Exchange Act Release No. 90099 (October 6, 2020); 85 FR 64551 (October 13, 2020) (SR–LCH SA–2020–005) (“Notice”).

⁴ Partial Amendment No. 1 amends the LCH SA Reference Guide: CDS Margin Framework to reflect all of the changes discussed herein. Partial Amendment No. 1 also includes Exhibit 4 (Text of the proposed change with the differences from the initial Exhibit 5C).

⁵ The description herein is substantially excerpted from the Notice.

⁶ See Notice, 85 FR at 64552.

⁷ Capitalized terms used but not defined herein have the same definitions as in the CDSClear Margin Framework or Default Fund Methodology, as applicable.

⁸ See Notice, 85 FR at 64552.

⁹ *Id.*

¹⁰ See Notice, 85 FR at 64552.

¹¹ *Id.* (noting that in the event of a clearing member default, market feedback indicates that it is optimal from a friction cost standpoint for swaptions to be liquidated as a delta-hedged package intended to trade and hedge an option along with an index).

protection buyer will not be paying any accrued coupon via the Variation Margin ("VM") between the time it defaults and the end of the liquidation of its portfolio) for both CDS and CDS Options. The accrued coupon liquidation risk margin with respect to CDS Options remains the same, but would be amended to reflect that any such amount for CDX Swaptions contracts is converted from USD to EUR.

As a result of the foregoing proposed changes, LCH SA would update the Content table and the summary of changes and make corresponding changes to provision numbering throughout the CDSClear Margin Framework.

2. Supplement

To allow for the clearing of CDX Swaptions, LCH SA is proposing a number of changes in Part C of the Supplement to add or modify a number of relevant definitions. Specifically, in Section 1.2 (*Terms defined in the CDS Clearing Supplement*):

(a) The proposed definition of the term "CDX Swaption Standard Terms Supplement" would refer to the applicable documentation for the CDX Swaptions, as published by Markit North America, Inc. and as amended by the Supplement.

(b) The definition of the term "Index Swaption Cleared Transaction Confirmation" would refer to the applicable form of confirmation for CDX Swaptions in new indent (b), and would make some minor corrections in new indent (a) and in the last paragraph of the definition.

(c) The proposed definition of the term "Submission Deadline" would provide for both the Markit iTraxx and CDX exercise windows in respect of different swaptions.

(d) The definition of "Transaction Data" would include a new reference to the Option Type that is relevant for CDX Swaptions.

In addition, LCH SA proposes to replace all references to the standard fixed time of 4:00 p.m. (London time) or 5:00 p.m. (Central European Time), which apply only to iTraxx Swaptions, with the new defined term "Submission Deadline" in Sections 6.3, 6.4, 6.5 (paragraph (c)), 6.10 (paragraph (b)) and Sections 5.3, 5.5 and 5.7 of Appendix VIII (*CCM Client Transaction Requirements*).

For consistency purposes, LCH SA would amend Section 7.2 (*Creation of Initial Single Name Cleared Transactions for Settlement purposes in respect of Credit Events other than M(M)R Restructuring*) to include references to the relevant paragraph of

the CDX Swaption Standard Terms Supplement.

LCH SA would also add references to a CDX as an Underlying Index and the Swaption Type to the Schedules of Appendix I (*Form of Exercise Notice*) and Appendix II (*Form of Abandonment Notice*) to Part C of the Supplement.

In Appendix VIII (*CCM Client Transaction Requirements*) to Part C of the Supplement, LCH SA proposes to amend Section 1 to refer to the CDX Swaption Standard Terms Supplement and to remove the definition of "STS Supplement." LCH SA would make a related change in Section 8.2 of this Appendix by replacing the current reference to the "STS Supplement" with a reference to the "iTraxx® Swaption Standard Terms Supplement" as this section concerns only iTraxx Swaptions. LCH SA would also add references to the iTraxx® Swaption Standard Terms Supplement and the CDX Swaption Standard Terms Supplement or the relevant section of such Supplement, as applicable, and remove any reference to the STS Supplement in Sections 8.3 and 8.4 of this Appendix.

3. Procedures

LCH SA also proposes to modify Section 5 of the Procedures (*CDS Clearing Operations*) to include CDX Swaptions in the scope of the End of Day Price Contribution as set out in Paragraph 5.18.

LCH SA would change references from "CDS" to "CDS and an Index Swaption" in paragraphs 5.18.3 and 5.18.5, for instruments with a CDS Contractual Currency in U.S. Dollar. In paragraph 5.18.4 (*Use of composite spreads/prices*), LCH SA would modify the first sentence to ensure similar clarity. In the same paragraph, LCH SA would expand the scope of the End of Day Contributed Prices in respect of CDS with a Contractual Currency in U.S. Dollar to include Index Swaptions.

In paragraph 5.18.5(b), LCH SA would remove the restriction to Index Swaptions with a CDS Contractual Currency in Euro, and separate the Delta Hedged Swaption Package into two subsections in order to allow for the two different timings of iTraxx Swaptions and CDX Swaptions.

B. Other Changes Unrelated to CDX Swaptions

LCH SA is also proposing changes in the CDSClear Margin Framework and the Supplement that LCH SA represented are unrelated to the CDX Swaptions initiative.

In section 3.9 of the CDSClear Margin Framework, LCH SA proposes changes to align the methodology for calculating

Vega Margin with LCH SA's approach across all products and business segments. Vega Margin captures the risk of volatility changes in the options premium relative to the strikes, *i.e.*, the skew risk and the risk of changes in the volatility of volatility.¹² To address a risk model validation finding, LCH SA is proposing to change its risk model from a parametric model to a historical model, using predefined scenarios to simulate the risk of volatility change. This change in risk model would introduce shocks on the volatility itself rather than solely on the calculation's model parameters, as the current parametric model does. The proposed historical model would use a new methodology that relies on four regular and four stressed historical scenarios for each index family, calibrated based on the worst skew risk and the volatility-of-volatility risk at given confidence levels, as outlined below. Under both models, Vega Margin represents an add-on amount to Spread Margin (*i.e.*, a component of Total Initial Margin that covers the worst losses in the event of unfavorable credit spread and volatility moves) that accounts for potential moves in implied volatility. LCH SA does not expect that the proposed change from a parametric to a historical model will have a significant Profit and Loss ("P&L") impact on the calculation of Vega Margin.¹³

(a) LCH SA will develop the volatility scenarios using historical data since April 3, 2007. For each index family, LCH SA would identify historical scenarios by estimating the largest 5-day shifts in volatility distance, at a given percentile, between At-The-Money strikes and implied volatilities for options with a delta of 10%, 25%, 75% and 90%, to capture the deformation of volatility surface across strikes.

(b) LCH SA would calibrate the skew and smile scenarios related to the option pricing against the worst volatility surface distortion (*i.e.*, the largest changes of the volatility distance as explained above) at a given confidence level. LCH SA would derive these scenarios from volatility shocks at each delta level described above, which LCH SA will use to shift the end of day volatilities, at the corresponding delta levels, to calibrate a set of shifted or Stochastic Volatility Inspired ("SVI") scenarios as shown in the updated table in paragraph 3.9.2.

(c) LCH SA proposes to adjust the number of scenarios calculated for each index family from eight to four, because

¹² See Notice, 85 FR at 64552.

¹³ *Id.*

of the shocks that the new historical risk model will apply at volatility level.

In addition, LCH SA is proposing the following miscellaneous changes in the CDS Clear Margin Framework:

(a) Section 3 provides the Total Initial Margin framework with respect to both CDS and CDS Options. One component of the Total Initial Margin framework is the Short Charge, an amount which accounts for the risk of default by the underlying constituent entities of the relevant index.¹⁴ While the methodology for calculating Short Charge margin in section 3.1 would remain the same, LCH SA would amend the summary language to specify that it includes the P&L impact of liquidating a defaulting member's portfolio under one or two credit events. Currently, the number of credit events that LCH SA considers is set to two. The Risk Overview table in paragraph 3.2 also would reflect this change. As per the model used for linear U.S. products, the Short Charge amount would also cover the possibility of a default in respect of an exposure representing the average net short exposure of the ten (10) riskiest exposures with the defined recovery rate cap. Since the approach in respect of iTraxx Swaptions only accounts for the risk of default of the entity with the largest net short exposure, LCH SA is amending the language to include the additional default risk that it must take into account in respect of CDX Swaptions on CDX.NA.HY. As a result of these changes, LCH SA would also remove the specific rule to calculate the Financial Short Charge on Financial entities (which covered the default risk by the two largest Financials entities comprising the underlying constituent entities of the relevant index).

(b) LCH SA would remove a reference to a 10-year sample for the Foreign Exchange rate from paragraph 3.4.8.3, because it was not an accurate description of how LCH SA computes the Foreign Exchange rate.

(c) LCH SA also proposes to correct a typographical error in paragraph 3.8.2 (double parenthesis and period missing).

LCH SA also proposes several miscellaneous changes in the Supplement for purposes of clarification or harmonization, as described below.

Specifically, in Part C of the Supplement, Section 9.1 (*Creation of Matched Pairs*), LCH SA would add a principle governing the size of the Matched Pairs that it would create in the context of a Restructuring or an Exercise to align with equivalent

provisions of Parts A and B of the Supplement. LCH SA also proposes to remove the amounts of the Matched Pair from Section 8.1 (*Creation of Matched Pairs*) of Parts A and Part B of the Supplement, because LCH SA proposes that such amounts would be set forth in a new Clearing Notice that outlines the maximum applicable Matched Pair notional amounts. LCH SA represents that this proposed change would allow for greater flexibility in adapting these amounts according to market conditions and evolving open interest.¹⁵

In addition, LCH SA proposes to remove the conditional references to "if" from Section 2.4 and Appendix XIII (Section 2.6) of Part B of the Supplement and from Section 2.3 and Appendix VIII (Section 2.4) of Part C of the Supplement, given that the Protocol Effectiveness Condition as defined in the ISDA 2019 Narrowly Tailored Credit Event ("NTCE") Protocol published by the International Swaps and Derivatives Association, Inc. ("ISDA") on August 27, 2019 is now satisfied. For consistency purposes, LCH SA would make an equivalent amendment to Appendix XIII of Part A of the Supplement (Section 2.6) in respect of the 2014 ISDA Credit Derivatives Definitions Protocol published by ISDA on August 21, 2014.

LCH SA would also remove references to the Implementation Date as provided for in the 2019 ISDA NTCE Protocol from the definition of the "iTraxx® Swaption Standard Terms Supplement" in Section 1.2 of Part C of the Supplement to refer to the current version of this document which was published on March 20, 2017. LCH SA stated that at the time that ISDA had drafted the 2019 ISDA NTCE Protocol-related amendments and submitted them to the regulatory process, there was an initial draft Swaption Standard Terms Supplement that took account of this Protocol.¹⁶ LCH SA also stated that this draft did not progress, and that the most recent, applicable version remains the version published in 2017.¹⁷ Consequently, in Section 2.2 (*Index Swaption Cleared Transaction Confirmation*) of Part C of the Supplement, LCH SA would amend any confirmation in respect of a Swaption by specifying in a new indent (d) that the Standard Terms Date applicable to the underlying transaction of a Swaption will be the most updated version of the Standard Terms Supplement. This change will ensure that the applicable version is the one

that has taken into account the 2019 ISDA NTCE Protocol (*i.e.*, the versions applicable to Markit iTraxx and CDX published on the Implementation Date of such Protocol). As a result of this change, LCH SA would renumber the indents in Section 2.2 from (e) to (i).

LCH SA also proposes to make the following corrections to the Supplement:

(a) In Sections 7.10 of Parts A and B, LCH SA would replace the reference to a "CDS Clearing Member" with "Clearing Member" to use the correct defined term.

(b) In Sections 9.1 of Parts A and B, paragraph (c), LCH SA would specify that the Self Referencing Transaction is a Clearing Member Self Referencing Transaction to be consistent with the title of Section 9.1.

(c) In Section 1.2 of Part B, in the definition of "Index Cleared Transaction Confirmation," LCH SA would insert the correct name of the publisher of the documentation for Markit CDX.

(d) In Section 1.2 of Part C, LCH SA would correct a typographical error in the definition of "Swaption Restructuring Cleared Transaction" and remove the word "Eligible" from the definition of "Underlying Index Transaction" as an Eligible Index Swaption is not a defined term.

(e) In Appendix VIII of Part C, LCH SA would remove the definitions from Section 1 as these terms are already defined in Section 1.2 of Part C.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.¹⁸ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁹ and Rule 17Ad-22(e)(6)(i) thereunder.²⁰

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the

¹⁵ See Notice, 85 FR at 64553.

¹⁶ See Notice, 85 FR at 64554.

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78s(b)(2)(C).

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17Ad-22(e)(6)(i).

¹⁴ See Notice, 85 FR at 64553.

custody or control of LCH SA or for which it is responsible.²¹

As described above in Section II.A, LCH SA is proposing to revise its CDSClear Margin Framework, Supplement, and Procedures in order to extend their applicability to CDX Swaptions. For example, the proposed change to the Daily Contributions Assessment in the CDSClear Margin Framework would require Members to make price contributions on CDX Swaptions for all strikes that are multiples of 2.5 basis points for CDX.NA.IG and 0.5 cents for CDX.NA.HY of a given expiry when Members have at least one open position on one strike for that expiry. The revisions to the Supplement would allow the clearing of CDX Swaptions by amending various definitions to make them applicable to CDS Swaptions. The Procedures similarly would be revised to include CDX Swaptions in, for example, the scope of the End of Day Price Contribution. The language in the Short Charge component of the total initial margin has also been amended to include the additional default risk that must be taken into account with CDX Swaptions. The Commission understands that, taken together, these changes would amend LCH SA's risk management system and clearing procedures to ensure that LCH SA can appropriately manage the risks of transactions in CDX Swaptions and, in turn, to help ensure that LCH SA has sufficient financial resources. The Commission therefore believes that these changes would promote the prompt and accurate clearance and settlement of CDX Swaptions. Similarly, given that mismanagement of the risks associated with clearing CDX Swaptions could cause LCH SA to realize losses on such transactions and threaten its ability to operate, thereby threatening access to securities and funds in LCH SA's control, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.

LCH SA is also proposing miscellaneous changes that are unrelated to CDX Swaptions. For instance, LCH SA is proposing corrections to various terminology in the Supplement (replacing reference in Section 7.10 of Parts A and B to a "CDS Clearing Member" with the correct defined term "Clearing Member," specifying in Section 9.1 of Parts A and B that the Self Referencing Transaction is a Clearing Member Self Referencing

Transaction, removing the term "Eligible" from the definition of "Underlying Index Transaction" in Section 1.2 of Part C as a typographical error), as well as wording changes to reflect the fact that the Protocol Effectiveness Condition with regard to the 2019 ISDA NTCE Protocol published by ISDA on August 27, 2019 is now satisfied along with the various clean-up and typographical changes. The Commission believes that these clarifications strengthen LCH SA's risk management documents with clear and up-to-date information, which in turn is consistent with protecting investors and the public interest.

LCH SA is also proposing changes to the Vega Margin methodology. Specifically, LCH SA is proposing to transition from a parametric model to a historical model, using predefined scenarios to simulate the risk of volatility change. The Commission believes that this proposed change will enable LCH SA to more accurately capture changes in option value due to volatility and generate margins commensurate with the risks and attributes of CDS and CDS options, which in turn will enhance LCH SA's ability to manage the risks of transactions in CDX Swaptions and ultimately to promptly and accurately settle securities transactions and safeguard funds and securities.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.²²

B. Consistency With Rule 17Ad-22(e)(6)(i)

Rule 17Ad-22(e)(6)(i) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.²³

As noted above, the proposal would amend the CDSClear Margin Framework with respect to the Short Charge component of the total initial margin to include the additional default risk that must be taken into account with options on CDX.NA.HY. Such a change is necessary because the current approach with iTraxx Swaptions only accounts for the risk of default of the entity with the largest net short exposure, and the CDX Swaptions approach covers the

possibility of a default in respect of an exposure representing the average net short exposure of the ten riskiest exposures with the defined recovery rate cap, which is an additional default risk posed by CDX Swaptions. The Commission therefore believes that this proposed change would enhance LCH SA's risk-based margin system by considering and producing margin levels commensurate with the risks and particular attributes of CDX Swaptions.

The Commission also believes that the proposed rule changes to add the new methodology for calculating Vega Margin, based on a historical model approach rather than a parametric model, to account for the skew risk and volatility-of-volatility risk specific to CDS Options would likewise strengthen LCH SA's ability to produce margins commensurate with these products because this proposed approach would be based on known, rather than unobservable, parameters used in assessing the value of an option.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(6)(i).²⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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-LCH SA-2020-005 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-LCH SA-2020-005. 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

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(6)(i).

²⁴ 17 CFR 240.17Ad-22(e)(6)(i).

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 LCH SA and on LCH SA's website at: <https://www.lch.com/resources/rulesand-regulations/proposed-rule-changes-0>. 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-LCH SA-2020-005 and should be submitted on or before December 24, 2020.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 amends the Reference Guide: CDS Margin Framework to reflect all of the changes discussed in this Order. By updating the Reference Guide: CDS Margin Framework to reflect all of the changes being made, Partial Amendment No. 1 ensures that the exhibit 5C accurately reflects all intended rule changes and is designed, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.²⁶

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of

Section 17A(b)(3)(F) of the Act²⁷ and Rule 17Ad-22(e)(6)(i) thereunder.²⁸

It is therefore ordered pursuant to Section 19(b)(2) of the Act²⁹ that the proposed rule change, as modified by Partial Amendment No. 1 (SR-LCH SA-2020-005), be, and hereby is, approved.³⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-26597 Filed 12-2-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90526; File No. SR-NYSE-2020-77]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Deemed Approval of a Proposed Rule Change To Adopt Rule 8.601 (Active Proxy Portfolio Shares) and Rule 8.900 (Managed Portfolio Shares), Amend the Preamble to Rule 8P, and Amend Section 302.00 of the Listed Company Manual

November 27, 2020.

On September 22, 2020, New York Stock Exchange LLC filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt Rule 8.601 (Active Proxy Portfolio Shares) and Rule 8.900 (Managed Portfolio Shares), amend the preamble to Rule 8P, and amend Section 302.00 of the Listed Company Manual to accommodate the listing of Active Proxy Portfolio Shares and Managed Portfolio Shares.

The proposed rule change was published for comment in the **Federal Register** on October 9, 2020.³ The Commission received no comment letters on the proposed rule change.

As of November 23, 2020, pursuant to Section 19(b)(2)(D) of the Act,⁴ the proposed rule change (SR-NYSE-2020-

77) was deemed to have been approved by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-26596 Filed 12-2-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90524; File No. SR-ICC-2020-013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to ICC's Fee Schedule

November 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4,² notice is hereby given that on November 16, 2020, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. On November 25, 2020, ICC filed Partial Amendment No. 1 to the proposed rule change.³ ICC filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the "proposed rule change"), from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to modify ICC's fee schedule to introduce two credit default index swaption ("Index Swaption") volume incentive programs.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Partial Amendment No. 1 to the proposed rule change, ICC provided additional details and analyses surrounding the proposed rule change in the form of a confidential Exhibit 3. Partial Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ 17 CFR 240.17Ad-22(e)(6)(i).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90091 (Oct. 5, 2020), 85 FR 64194.

⁴ 15 U.S.C. 78s(b)(2)(D).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 15 U.S.C. 78s(b)(2).

These revisions do not require any changes to the ICC Clearing Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The proposed changes are intended to modify ICE Clear Credit's fee schedule to introduce two Index Swaption volume incentive programs for house origin Index Swaption transactions. Pursuant to an Index Swaption, one party (the "Swaption Buyer") has the right (but not the obligation) to cause the other party (the "Swaption Seller") to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms.⁶ In the case of Index Swaptions that may be cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.⁷ The proposed changes are described in detail as follows.

ICC maintains a Clearing Participant ("CP") fee schedule⁸ that is publicly available on its website, which ICC proposes to update in connection with the proposed volume incentive

programs. Currently, clearing fees are due by CPs in accordance with the product, amount and currency set out in the fee schedule. ICC proposes to amend this fee schedule to include details on the volume incentive programs, subject to any regulatory review or approval process.

ICC previously filed with the Commission the relevant clearing fees for Index Swaptions⁹ and further proposes to amend the CP fee schedule to introduce the volume incentive programs for house origin Index Swaption transactions. Under the amended fee schedule, the proposed Standard Program automatically, and without further action by CPs, applies to CPs and provides a tiered discount schedule based on USD equivalent, non-discounted Index Swaption fees billed since the start of the year ("Billed Fees"). The first 300,000 of Billed Fees are not discounted, a 10% discount is provided for the second 300,000 of Billed Fees, a 20% discount is provided for the third 300,000 of Billed Fees, and a 30% discount is provided for all cleared Index Swaptions above that level. As an alternative to the Standard Program, CPs may elect to participate in the annual Prepaid Program. For calendar year 2021, the proposed Prepaid Program election deadline is January 25, 2021 and requires an upfront payment of \$750,000 by February 1, 2021. Index Swaption fees are \$2/million or €2/million, and the upfront payment is applied toward the first \$750,000 of Index Swaption clearing fees due in 2021. The discount or prepaid fee schedule would be applied at the time of invoice.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act¹⁰ and the regulations thereunder applicable to it. More specifically, the proposed rule change establishes or changes a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. ICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(D),¹³ which requires that the rules of the clearing agency provide for

the equitable allocation of reasonable dues, fees, and other charges among its participants.

ICC believes that the proposed fee discounts for house origin Index Swaption transactions have been set at an appropriate level. In ICC's view, the proposed fees are reasonable under each proposed volume incentive program as the discounts correspond with anticipated volumes, costs and expenses, and revenues under each program, and they consider current market activity as well as anticipated market activity with respect to clearing house origin Index Swaption transactions at ICC. Namely, in determining the appropriate discount level and program structure, ICC discussed the proposed volume incentive programs with its Board (who approved the programs and discounts) and took into account factors such as anticipated volume, revenue, expenses, and CP market participation in this clearing service, including based on different fee levels. More specifically, the proposed discounts are associated with anticipated volumes via the tiered discount schedule in the Standard Program and the upfront payment applied toward clearing fees in the Prepaid Program, and are designed to encourage CP market participation to bring increased volume to grow the clearing service while properly compensating ICC for the risks, costs and expenses of clearing house origin Index Swaption transactions.

Moreover, the proposed fee changes will apply equally to all market participants clearing house origin Index Swaption transactions. Namely, the Standard Program automatically, and without further action by CPs, applies to all CPs. As an alternative to the Standard Program, any CP may elect to participate in the annual Prepaid Program, which requires election and an upfront payment by specified dates. Therefore, the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.¹⁴ ICC therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹⁵ and the regulations thereunder applicable to it and is appropriately filed pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f)(2) of Rule 19b-4¹⁷ thereunder.

⁶ ICC previously filed with the Commission changes to certain other policies and procedures related to clearing Index Swaptions (the "Swaption Rule Filings"). See the Swaption Rule Filings for additional details. SEC Release No. 34-87297 (October 15, 2019) (approval), 84 FR 56270 (October 21, 2019) (SR-ICC-2019-007); SEC Release No. 34-89142 (June 24, 2020) (approval), 85 FR 39226 (June 30, 2020) (SR-ICC-2020-002); SEC Release No. 34-89436 (July 31, 2020) (approval), 85 FR 47827 (August 6, 2020) (SR-ICC-2020-008); SEC Release No. 34-89948 (September 22, 2020) (approval), 85 FR 60845 (September 28, 2020) (SR-ICC-2020-010).

⁷ Index Swaptions are also referred to herein and in the Swaption Rule Filings as "index options" or "index CDS options", or in similar terms.

⁸ CP fee details available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.

⁹ SEC Release No. 34-90299 (October 30, 2020) (notice), 85 FR 70700 (November 5, 2020) (SR-ICC-2020-012).

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78q-1(b)(3)(D).

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78q-1.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, the proposed changes modify ICC's fee schedule to introduce two volume incentive programs for house origin Index Swaption transactions and will apply uniformly across all market participants clearing house origin Index Swaption transactions. The implementation of such changes does not preclude other market participants from offering similar incentive programs. Moreover, ICC does not believe that the amendments would adversely affect the ability of market participants to access clearing services. Accordingly, ICC does not believe the amendments impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-ICC-2020-013 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2020-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

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-ICC-2020-013 and should be submitted on or before December 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-26595 Filed 12-2-20; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. FAA-2020-1130; Notice of Availability Docket No. 20-ANE-6]

Notice of Availability of Categorical Exclusion and Record of Decision (CATEX/ROD) for Boston Harbor Seaplane Operations, MA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA, Eastern Service Center is issuing this notice to advise the public of the availability of the Categorical Exclusion/Record of Decision (CATEX/ROD) for the Boston Harbor Seaplane Operations. The FAA reviewed the action and determined it to be categorically excluded from further environmental review.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Pieroni, Federal Aviation Administration, Operations Support Group, Eastern Service Center, 1701 Columbia Avenue, College Park, Georgia 30337, (404) 305-5586.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) proposes to implement a Letter of Agreement (LOA) between Boston Airport Traffic Control Tower (BOS ATCT), Boston Consolidated Terminal Radar Approach Control (A90) and Tailwind Air Service for seaplane operations in the Boston, Massachusetts Inner Harbor. This proposed LOA would ensure standardized, safe and de-conflicted seaplane operations in the Boston, Massachusetts Inner Harbor from BOS ATCT operations and allows for efficient airspace operations in the General Edward Lawrence Logan International Airport (BOS) Class B airspace. The proposed VFR handling of seaplane arrivals and departures will enhance safety and minimize delays for aircraft at BOS. The FAA reviewed the action and determined it to be categorically excluded from further environmental review according to FAA Order 1050.1F, Environmental Impacts: Policies and Procedures. The applicable categorical exclusion is § 5-6.S(i.).

Issued in College Park, Georgia, on November 24, 2020.

Andrew Pieroni,

Environmental Protection Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020-26603 Filed 12-2-20; 8:45 am]

BILLING CODE 4910-13-P

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. FAA–2020–0257]****Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Limited Recreational Unmanned Aircraft Operation Applications**

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 13, 2020. The information collected will be used to recognize Community Based Organizations (CBOs), administer an aeronautical knowledge and safety test, establish fixed flying sites, and approve standards and limitations for Unmanned Aircraft Systems (UAS) weighing more than 55 pounds.

DATES: Written comments should be submitted by January 4, 2021.

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: Kevin Morris by email at: kevin.morris@faa.gov; phone: (202) 267–1078.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–XXXX.
Title: Limited Recreational Unmanned Aircraft Operation Applications.
Form Numbers: Online collection.
Type of Review: New information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 13, 2020 (85 FR 14723). In 2018, Congress passed the FAA Reauthorization Act of 2018 (Pub. L. 115–254). Section 44809 of Public Law 115–254 allows a person to operate a small unmanned aircraft (UA) without specific certification or operating authority from the FAA if the operation adheres to certain limitations. These limitations require the FAA to recognize community-based organizations (CBOs), develop and administer an aeronautical knowledge and safety test, establish fixed flying sites, and approve standards and limitations for unmanned aircraft weighing more than 55 pounds. The information will be collected online. The information collected will be limited to only that necessary for the FAA to complete a review of an application under the following statutory requirements:

- § 44809(c)(1), Operations at Fixed Sites
- § 44809(c)(2)(a), Standards and Limitations—UA Weighing More Than 55 Pounds
- § 44809(c)(2)(b), Operations at Fixed Sites—UA Weighing More Than 55 Pounds
- § 44809(g)(1), Aeronautical Knowledge and Safety Test
- § 44809(i), Recognition of Community-Based Organizations

Respondents: Individuals and organizations operating under the Exception for Limited Recreational Operations of Unmanned Aircraft who wish to be recognized as CBOs, administer the aeronautical knowledge and safety test, establish fixed flying sites, and have standards and limitations for unmanned aircraft weighing more than 55 pounds approved.

Frequency: On occasion.

Estimated Average Burden per Response: § 44809(c)(1) Operations at Fixed Sites—Operating Procedure Required: 30 minutes; § 44809(c)(2)(b) Operations at Fixed Sites—Unmanned Aircraft Weighing More Than 55 Pounds: Fixed Flying Site approval: 30 minutes; § 44809(g)(1) Aeronautical Knowledge and Safety Test—General: 34 hours; § 44809(i) Recognition of Community-Based Organizations: 2 hours.

Estimated Total Annual Burden: 1,224 hours.

Issued in Washington, DC, on November 30, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–26617 Filed 12–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. FAA–202–0264]****Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Experimental Permits for Reusable Suborbital Rockets.**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 08, 2020. The FAA collects information from applicants for experimental permits in order to determine whether they satisfy the requirements for obtaining an experimental permit.

DATES: Written comments should be submitted by January 4, 2021.

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: Charles Huet by email at: Charles.huet@faa.gov; phone: 202–267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0722.

Title: Experimental Permits for Reusable Suborbital Rockets.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 08, 2020 (85 FR 19792). There were no comments. 14 CFR part 437 established requirements for the FAA's authority to issue experimental permits for reusable suborbital rockets to authorize launches for the purpose of research and development, crew

training and showing compliance with the regulations. The information collected includes data required for performing a safety review, which includes a technical assessment to determine if the applicant can launch a reusable suborbital rocket without jeopardizing public health and safety and the safety of property. This information collection requirement is intended for incorporating acquired data into the experimental permit, which then becomes binding on the launch or reentry operator. The applicant is required to submit information that enables FAA to determine, before issuing a permit, if issuance of the

experimental permit would jeopardize the foreign policy or national security interests of the U.S.

Respondents: Approximately 4 applicants for experimental permits.

Frequency: On occasion.

Estimated Average Burden per Response: 1,900 hours.

Estimated Total Annual Burden: 2,533 hours per year.

Issued in Washington, DC.

Stephen Earle,

Acting Deputy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2020–26652 Filed 12–2–20; 8:45 am]

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Part II

Social Security Administration

20 CFR Parts 404 and 416

Revised Medical Criteria for Evaluating Musculoskeletal Disorders; Final Rule

SOCIAL SECURITY ADMINISTRATION**20 CFR Parts 404 and 416**

[Docket No. SSA–2006–0112]

RIN 0960–AG38

Revised Medical Criteria for Evaluating Musculoskeletal Disorders**AGENCY:** Social Security Administration.**ACTION:** Final rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving musculoskeletal disorders in adults and children under titles II and XVI of the Social Security Act (Act). The revisions reflect our adjudicative experience, advances in medical knowledge, and comments we received from the public in response to a notice of proposed rulemaking (NPRM).

DATES: These rules are effective April 2, 2021.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:**Background**

We are making final the rules for evaluating musculoskeletal disorders that we proposed in the NPRM published in the *Federal Register* on May 7, 2018.¹ The preamble to the NPRM provides the background for these revisions. You can view the preamble to the NPRM by visiting <http://www.regulations.gov> and searching for document “SSA–2006–0112.” We are making a number of changes in these final rules in response to public comments to the NPRM, which we explain below. We are also making a conforming change to the endocrine disorders body system to comport with the change we proposed to section 416.926a(m) to be consistent with these final rules.

Why are we revising the listings for evaluating musculoskeletal disorders?

We developed these final rules as part of our ongoing review of the listings. We are revising the listings for evaluating musculoskeletal disorders to update the

medical criteria and clarify how we evaluate musculoskeletal disorders.

When will we begin to use these final rules?

As we noted in the dates section of this preamble, these final rules will be effective on April 2, 2021. We delayed the effective date of the rules to give us time to update our systems, and to provide training and guidance to all of our adjudicators before we implement the final rules. The current rules will continue to apply until the effective date of these final rules. When the final rules become effective, we will apply them to new applications filed on or after the effective date of the rules, and to claims that are pending on or after the effective date.²

Public Comments on the NPRM

In the NPRM, we provided the public with a 60-day comment period, which ended on July 6, 2018. We received 39 comments.³ The comments came from advocacy groups, legal services organizations, a State agency that makes disability determinations for us, medical organizations, and individual commenters. A number of the letters provided identical (or very similar) comments and recommendations.

We carefully considered all of the comments that were relevant to this rulemaking. We have tried to summarize the commenters’ views accurately and respond to all of the significant issues raised by the commenters that were within the scope of these rules. We have not summarized or responded to comments that were outside the scope of the proposed rules. Some commenters noted provisions with which they agreed and did not make suggestions for changes in those provisions. We did not summarize or respond to those comments.

Comment: Several commenters asked us to withdraw this rule because they opined the changes we proposed were more stringent in nature. They asserted

² This means that we will use these final rules on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court’s remand.

³ The docket summary on *Regulations.gov* indicates 46 comments were received; however, this number includes seven comments we received for a prior final rule in which we sought comments with a comment period that closed in January 2002 (66 FR 58009, November 19, 2001). Thus, we actually only received a total of 39 public comments in response to these rules.

fewer applicants would therefore qualify for disability at the listing level. Consequently, they asserted, further assessment at later steps in the evaluation process would be needed, requiring vocational information and consideration of the person’s age, education, and work experience to make a determination. Ultimately, the entire disability process would be prolonged. Commenters also asserted that in some cases, even if we changed certain listing criteria, the functional limitations associated with some musculoskeletal conditions would not necessarily change, but would rather result in further evaluations being needed at steps 4 and 5 (and perhaps disability awards being made at those levels). This too could result in longer decision times.

Response: We decline to withdraw this final rule. The listings describe impairments that preclude the ability to perform “any gainful activity” (or, in the case of a child applying for Supplemental Security Income (SSI) payments based on disability, to identify impairments that result in marked and severe functional limitations).⁴ Even if in some cases (although not all) the revised rule results in more decisions being made at steps 4 and 5, we still have a statutory obligation to ensure the listings are up to date and accurately reflect current medical criteria. Contrary to the commenters’ assertion, changing the listing *does* affect the associated functional criteria as well. The updated functional criteria are uniform and specific severity criteria, which represent the level of dysfunction of the upper and lower extremities that would cause a person to be unable to do any work or would cause a child to be unable to perform age-appropriate activities.

Comment: One commenter believes that the functional criteria we use for adults (Part A) and for children (Part B) should not be the same, because children with disabilities are defined by their ability to participate in activities at a level comparable to children of the same age without disabilities.

Response: We disagree. The functional criteria for musculoskeletal disorders in children age 3 and older are appropriately comparable to the functional criteria for musculoskeletal disorders in adults. When we evaluate a child’s functioning for purposes of the disability program, including under these listings, we consider whether the child does the things that other children their age typically do, or whether they

¹ 83 FR 20646 (2018).

⁴ 20 CFR 404.1525(a) and 416.925(a).

have limitations and restrictions because of their medically determinable impairment(s). We also look at how well children do the activities and how much help they need from family, teachers, or others. Information about what children can and cannot do, and how they function on a day-to-day basis at home, school, and in the community, allows us to compare their activities to the activities of children the same age who do not have impairments.⁵ In 101.00E1 (*How do we use the functional criteria to evaluate your musculoskeletal disorder under these listings?*), we explain that under these rules we compare the musculoskeletal functioning of a child age 3 and older to the functioning of children the same age who do not have impairments, whereas we explain in 1.00E2 (*Work environment*) that we evaluate musculoskeletal functioning for adults with respect to the work environment. Furthermore, we provide unique criteria for evaluating musculoskeletal disorders in infants and toddlers in listing 101.24 (*Musculoskeletal disorders of infants and toddlers, from birth to attainment of age 3, with developmental motor delay*), which take into account the rapid development of motor function during the infant and toddler stages.

Comment: Many commenters asked that, in addition to considering a 0 to 5 grading scale of muscle function, we consider alternative, equivalent, medically acceptable grading scales. One commenter expressed that a 0 to 5 grading scale may not be reliable for children who are age 5 or younger, or for older children and adults with cognitive impairments, because of these groups' presumed inability to follow the test instructions.

Response: We agree with these comments, and provide clarification in 1.00C2c (*Physical examination report(s)*) and 101.00C2c (*Physical examination report(s)*). We revised the introductory text for reduction in muscle strength to indicate that the measurement should be based on a muscle strength grading system that is considered medically acceptable for the person's age and impairments. We also state that we will accept muscle strength tests using scales other than the 0 to 5 scale, provided the scales used are equivalent, medically acceptable scales.⁶ Furthermore, we added an

explanation of what we consider reduction in muscle strength present when the evidence demonstrates that the person's muscle strength is less than active range of motion against gravity with maximum resistance. Since *Table 1—Grading System of Muscle Function* in 1.00C2c (*Physical examination report(s)*) and 101.00C2c (*Physical examination report(s)*) already includes multiple examples of alternative scales, including those suggested, and we added the clarification that we will accept equivalent, medically acceptable scales, we did not add the additional suggested alternative percentage scale used by Kendall and McCreary. If a person's musculoskeletal disorder causes a reduction in muscle strength, and we do not have a report documenting the strength of the muscle(s) in question because the person cannot participate in muscle strength testing, we will consider other objective clinical findings appropriate to the specific musculoskeletal disorder. As well, we note that adults and children with cognitive impairments also may be found disabled on another basis without consideration of their musculoskeletal impairments. We will cover this information, about equivalent, medically acceptable scales, including the Kendall and McCreary scale, during our training on these final rules to fully ensure that adjudicators are aware.

Comment: One commenter suggested that we should not require a positive straight-leg raising test, but should instead use a “cluster of tests” and allow flexibility in evaluations.

Response: We disagree. The straight-leg raising test is a longstanding requirement for current listing 1.04 (*Disorders of the spine*), and it provides objective medical evidence in cases involving lumbar nerve root compromise. The straight-leg raising test is routinely used in medical examinations and is well-accepted by the medical community. It does not require specialty equipment and is considered reliable, accurate, and non-invasive.⁷ ⁸ Furthermore, the commenter

chart, the none/trace/poor/fair/good/normal alternate scale.

⁷ Fajolu, O.K., Pencle, F.J.R., Rosas, S., & Chin, K.R. (2018). A prospective analysis of the supine and sitting straight-leg raise test and its performance in litigation patients. *Journal of Spine Surgery*, 12(1), 58–63. <https://doi.org/10.14444/5010>.

⁸ Rabin, A., Gerszten, P.C., Karausky, P., Bunker, C.H., Potter, D.M., & Welch, W.C. (2007). The sensitivity of the seated straight-leg raise test compared with the supine straight-leg raise test in patients presenting with magnetic resonance imaging evidence of lumbar nerve root compression. *Archives of Physical Medicine and*

did not specify the “cluster of tests” that should be used instead.

Comment: One commenter asked that we clarify which sources we consider to be acceptable medical sources, and that we consider physical therapists as acceptable medical sources.

Response: We need objective medical evidence from an “acceptable medical source” to establish the existence of a medically determinable impairment(s). We define in 20 CFR 404.1502(a) and 416.902(a) which sources we consider to be “acceptable medical sources.” To the extent that information is already provided at length in our existing regulations, we do not repeat it here. However, in response to the commenter's specific concern, we note that physical therapists are not included in the list of acceptable medical sources. As we explained when we updated our medical evidence rules in 2017,⁹ our acceptable medical sources have licensure requirements that are more nationally consistent, which is essential for us to administer a national disability program. For physical therapists, States significantly vary on titles, the required hours of experience for licensure, and the scope of practice, such as clinical and non-clinical practice. Thus, we do not include them in the list of acceptable medical sources.

When we evaluate the severity of musculoskeletal disorders throughout the sequential evaluation process, we consider all relevant evidence we receive from all medical sources, including physical therapists, regardless of whether they are an acceptable medical source. We therefore note that while evidence from physical therapists cannot establish a medically determinable impairment, the evidence can still help us establish what, if any, functional limitations arise from the medically determinable impairment.

Comment: One commenter asked that we use the terms “arm” instead of “upper extremity” and “leg” instead of “lower extremity.”

Response: We did not adopt this comment. An upper extremity includes not just the arm, but also structures such as the fingers, hand, wrist, elbow, forearm, upper arm, and shoulder; and a lower extremity includes not just the leg, but also the toes, feet, ankles, lower leg, knee, upper leg, and hip.

Comment: One commenter asked that we define the ankle as the talocrural joint, instead of the tarsal joint, as the talocrural joint is the ankle proper.

Rehabilitation, 88(7), 840–43. <https://doi.org/10.1016/j.apmr.2007.04.016>.

⁹ 82 FR 5844 (2017).

⁵ 20 CFR 416.924a and Social Security Ruling (SSR) 09–1p: Title XVI: Determining Childhood Disability Under the Functional Equivalence Rule—The “Whole Child” Approach. Available at: https://www.ba.ssa.gov/OP_Home/rulings/ssi/02/SSR2009-01-ssi-02.html.

⁶ For example, Table 1 (included in the NPRM and again here) includes, under the muscle strength

Response: We agree with the comment. In 1.00M (*What do we consider when we evaluate non-healing or complex fractures of the femur, tibia, pelvis, or one or more of the talocrural bones (1.22)?*), 1.20C (*Amputation due to any cause*), 1.20D (*Amputation due to any cause*), 101.00M (*What do we consider when we evaluate non-healing or complex fractures of the femur, tibia, pelvis, or one or more of the talocrural bones (101.22)?*), 101.20C (*Amputation due to any cause*), and 101.20D (*Amputation due to any cause*), we referred to the ankle as the “tarsal joint,” which is incorrect. We replaced “tarsal” with “talocrural” in these sections, and also in listings 1.22 (*Non-healing or complex fractures of the femur, tibia, pelvis, or one or more of the talocrural bones*) and 101.22 (*Non-healing or complex fractures of the femur, tibia, pelvis, or one or more of the talocrural bones*).

Comment: One commenter asked that we clarify whether these rules consider Syme amputations.

Response: We did not make any changes in the final rules based on this comment. The criteria in 1.20D (*Amputation due to any cause*) and 101.20D (*Amputation due to any cause*) require amputation of one or both lower extremities, occurring at or above the ankle. A Syme amputation does not meet the criteria in 1.20D and 101.20D, because it is an amputation done through the ankle in which the tibia and fibular are left intact, the foot is removed, and the heel pad is saved. This is done so that the body’s weight can be borne over the distal end of the stump.¹⁰ A Syme amputation offers early post-operative weight-bearing without the need for gait training, better gait pattern with less energy expenditure, and less pressure on the distal stump.^{11 12} As a result, a person with a Syme amputation often requires only a cane and walking boot to ambulate post-surgery. Once the stump has sufficiently healed, a prosthesis is fitted to allow near-normal functioning. For this reason, the impairment, in and of itself, does not rise to listing-level

severity. In cases involving a Syme amputation we would then evaluate the claim under the guidance in 1.00S (*How do we evaluate musculoskeletal disorders that do not meet one of these listings?*) and 101.00R (*How do we evaluate musculoskeletal disorders that do not meet one of these listings?*).

Comment: Many commenters asked that we clarify that the terms “compromise” and “impingement” are not required for listings 1.15 (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) and 101.15 (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*), because other terms such as “displacement” and “foraminal stenosis” also may indicate compromise of a nerve root.

Response: We did not make any changes in the final rules based on these comments. Listings 1.15 (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) and 101.15 (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) require symptoms of radicular distribution of one or more manifestations, radicular neurological signs, findings on imaging, and physical limitation of musculoskeletal functioning. We explain in 1.00F1 (*What do we consider when we evaluate disorders of the skeletal spine resulting in a compromise of a nerve root(s)? (1.15)*) and 101.00F1 (*What do we consider when we evaluate disorders of the skeletal spine resulting in a compromise of a nerve root(s)? (101.15)*) that compromise of a nerve root may be referred to as “nerve root impingement,” and both are terms used when a physical object, such as a tumor or herniated disc, is seen pushing on the nerve root in an imaging study or during surgery. Moreover, while the proposed terms of “displacement” and “foraminal stenosis” may indicate compromise of a nerve root, they are not exclusively alternative terms for compromise of a nerve root but instead have separate meanings.^{13 14} “Disc displacement” is an alternative term for “disc herniation” and “foraminal stenosis” refers to narrowing of the openings between the bones of the spine. Both of these conditions may occur in people without nerve root compromise as described by

these listings. We do not include every possible term indicating compromise of a nerve root. We consider all evidence regardless of whether the terms we include in the rules, or other comparable terms, appear in the evidence. We also note that our medical consultants are acceptable medical sources with formal medical training, and they will not be confused by commonly accepted alternative medical terms.

Comment: Many commenters asked that we include “pseudoclaudication” as an alternative term for “neurogenic claudication.”

Response: We adopted these comments. In 1.00G2 (*Compromise of the cauda equina*) and 101.00G2 (*Compromise of the cauda equina*), we added “pseudoclaudication” as an alternative term for “neurogenic claudication.”

Comment: Some commenters objected to the removal of listing criteria for spinal arachnoiditis found in current 1.04B (*Disorders of the spine*).

Response: Spinal arachnoiditis is a rare spinal disorder involving inflammation of the arachnoid, which is one of the membranes surrounding the spinal cord. The inflammation can result in adhesion of the nerve roots, which, in turn, affects nerve function.^{15 16} The disorder is characterized by neurological signs and symptoms, including, but not limited to, pain, numbness or weakness in the legs, muscle cramps or spasms, and motor paralysis.^{17 18} We believe spinal arachnoiditis is more appropriately evaluated under the neurological body system due to its origins in the nervous system. Listings 11.08 (*Spinal cord disorders*) and 111.08 (*Spinal cord disorders*) offer different methods of evaluating functional limitations resulting from spinal cord disorders, such as spinal arachnoiditis, including extreme limitation in motor function or marked limitation in physical and mental functioning, which may be appropriate for evaluating the functional limitations caused by spinal arachnoiditis depending on the medical evidence we receive. We added a statement to 1.00F (*What do we consider when we evaluate disorders of the skeletal spine resulting in compromise*

¹⁰ Diveley, R.L., & Kiene, R.H. (2008). An improved prosthesis for a syme amputation: Rex L. Diveley MD (1893–1980), Richard H. Kiene MD. *Clinical orthopaedics and related research*, 466(1), 127–129. <https://doi.org/10.1007/s11999-007-0027-0>.

¹¹ Syme Amputation for Limb Salvage: Early Experience with 26 Cases, Frykberg, R., Abraham, S., Tierney, E., and Hall, J. *The Journal of Foot and Ankle Surgery*, Volume 45, Issue 2, March–April 2007, pp 93–100. Doi: 10.1053/j.jfrs.2006.11.005.

¹² Syme Amputation and Prosthetic Fitting Challenges, Philbin, T., DeLuccia, D., Nitsch, R., Maurus, P. *Techniques in Foot & Ankle Surgery*, Sept. 2007—Volume 6—Issue 3—p147–155. Doi: 10.1097/BTF.0b013e31814255b9.

¹³ Raja, A., Hoang, S., Viswanath, O., Herman, J.A., & Mesfin, F.B. (2020). Spinal stenosis. In *StatPearls*. Retrieved from <https://www.ncbi.nlm.nih.gov/books/NBK441989/>.

¹⁴ Leonardi, M. & Boos, N. (2008). Disc herniation and radiculopathy. In N. Boos & M. Aebi, (Eds.), *Spinal Disorders Fundamentals of Diagnosis and Treatment* (pp. 481–512). Berlin: Springer. Available from https://link.springer.com/content/pdf/10.1007%2F978-3-540-69091-7_18.pdf.

¹⁵ Wright, M.H. + Denney, L.C. (2003). A comprehensive review of spinal arachnoiditis. *Orthopaedic Nursing*, 22(3), 215–9. doi: 10.1097/0006416-200305000-00010.

¹⁶ <https://rarediseases.info.nih.gov/diseases/5839/arachnoiditis>.

¹⁷ <https://my.clevelandclinic.org/health/diseases/12062-arachnoiditis>.

¹⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3237290/>.

of a nerve root(s) (1.15)?) and 101.00F (What do we consider when we evaluate disorders of the skeletal spine resulting in compromise of a nerve root(s) (101.15)?) indicating that spinal arachnoiditis should be evaluated under 11.00 and 111.00. Additionally, we will highlight this clarification during our training on these final rules.

Comment: Several commenters asked that we use plain language terminology instead of medical terminology in these rules, and gave an example of using “pins and needles” instead of “paresthesia.”

Response: We did not make any changes in the final rules based on these comments. While we drafted these rules using plain language to the extent possible, the rules specify the medical criteria we use to evaluate musculoskeletal disorders. The appropriate medical term is paresthesia. We note that the term “pins and needles” is at times used in medical literature^{19 20 21} but as a specific medical criteria we believe it is overly colloquial. As such, while we acknowledge that the term “pins and needles” may appear in medical records, we choose to not include the colloquialism in the regulatory text. We will cover this information during our training on these final rules to fully remind adjudicators that colloquialisms such as “pins and needles” may be seen in medical records.

Comment: One commenter stated that many of the terms used in these rules are “not defined well enough” for adjudicators and others to be sure what they mean and gave the examples of “unable,” “walk,” “fine and gross motor movements,” “picking,” “pinching,” “manipulating and fingering,” “handling,” “gripping and grasping,” “holding,” “turning,” “lifting and carrying,” “seriously limit,” and “prescribed treatment.”

Response: We disagree with these comments. These rules use “fine and gross movements” (not “fine and gross motor movements”), which is a term defined in 1.00E4 (*Fine and gross movements*) and 101.00E4 (*Fine and gross movements*). The majority of the other terms identified by this commenter are examples of fine movements (picking, pinching, manipulating, and fingering) and gross movements (handling, gripping, grasping, holding, turning, lifting, and

carrying), and we use these terms, as well as “unable” and “walk,” in these rules as they are defined in common English usage. The proposed rules did not include the terms “prescribed treatment” or “seriously limit.”

Comment: One commenter expressed concern with the guidance in 101.00C5b (*Response to treatment*) for child claims (which is also in 1.00C5b (*Response to treatment*) for adult claims) that explains we may defer our determination or decision under these listings for up to 3 months from the date treatment began. The commenters recommended that the length of deferral time be considered in consultation with a physician or other medical professional.

Response: We agree with and are adopting these comments. We revised 1.00C5b (*Response to treatment*) and 101.00C5b (*Response to treatment*) by removing the last sentence, which stated that we may defer our determination or decision under these listings for up to 3 months. The remaining guidance continues to explain that we need information about treatment over a sufficient period of time to determine its effect on a person’s musculoskeletal functioning. We use medical consultants and our adjudicative experience to determine the appropriate amount of time. We will not defer our determination or decision when the evidence establishes that the claimant is disabled, either under these listings or on another basis.

Comment: We sought comment on whether the proposed functional criteria in 1.00C6 (*Assistive devices*) and 101.00C6 (*Assistive devices*) were appropriate and sufficient. In response, one commenter asked that we add a fourth category of assistive devices, specifically wheeled mobility devices, including manual and power wheelchairs, to the list of assistive devices in 1.00C6 (*Assistive devices*) and 101.00C6 (*Assistive devices*). Most of the other commenters made similar comments, recommending that we add “wheelchairs and scooters” wherever we include “a documented medical need for a walker, bilateral canes, or bilateral crutches” in these rules, because people with a documented need for a wheelchair or scooter require “at least as much assistance in walking as those with a need for other assistive devices.” These commenters also asked that we “examine how a patient will use an assistive device, not merely why it is needed,” and that we require documentation of distance, cadence, and level of assistance.

Response: We are partially adopting the suggestions offered. The functional

criteria in these rules do not require an inability to walk, so the relative assistance in walking offered by different assistive devices is not the point of consideration. Rather, the functional criteria in these rules represent functional limitations related to the upper extremities. These functional limitations either directly represent upper extremity limitations, as with the criteria for an inability to perform fine and gross movements, or indirectly represent upper extremity limitations, as with the criteria for the use of a hand-held assistive device(s), which necessarily limits the use of the upper extremity holding the assistive device. Further, as we explain in 1.00C6d (*Hand-held assistive devices*) and 101.00C6d (*Hand-held assistive devices*), “[w]hen you use a one-handed, hand-held assistive device (such as a cane) with one upper extremity to walk and you cannot use your other upper extremity for fine or gross movements (see 1.00E4), the need for the assistive device limits the use of both upper extremities.”

To be responsive to the commenters, however, we added wheeled and seated mobility devices to the functional criteria based on how the wheeled and seated mobility device affects the person’s use of the upper extremities. As suggested by the commenters, these modifications to the functional criteria are reflected everywhere hand-held assistive devices were proposed in the NPRM. We also added explanation to the introductory text about how we will consider wheeled and seated mobility devices in 1.00C6e (*Wheeled and seated mobility devices*), 1.00E3 (*Functional criteria*), 1.00K4 (*Amputation of one upper extremity and one lower extremity (1.20C)*), 1.00K5 (*Amputation of one lower extremity or both lower extremities with complications of the residual limb(s) (1.20D)*), 101.00C6e (*Wheeled and seated mobility devices*), 101.00E3 (*Functional criteria*), 101.00K4 (*Amputation of one upper extremity and one lower extremity (1.20C)*), and 101.00K5 (*Amputation of one lower extremity or both lower extremities with complications of the residual limbs(s) (1.20D)*). We further clarified that any assistive device, regardless of whether it is wheeled, hand-held, or worn, must be supported by medical documentation of the medical need for the assistive device for a continuous period of at least 12 months in 1.00C6a (*General*) and 101.00C6a (*General*). With respect to the requests that we require documentation of distance, cadence, and level of assistance, we decline to do so. Most records already supply the information

¹⁹ Harrison’s Principles of Internal Medicine, Chapter 22 (<https://accessmedicine.mhmedical.com/content.aspx?sectionid=192011473&bookid=2129#196882079>).

²⁰ <https://www.ncbi.nlm.nih.gov/medgen/14619>.

²¹ Bates’ Guide to Physical Examination and History Taking Twelfth Edition.

needed to assess the new functional criteria whereas information about the requested items, especially distance, is not typically provided and would necessitate additional development and burden to the claimant to obtain that information.

Comment: One commenter asked that we clarify that hand-held assistive devices are devices you hold onto.

Response: We adopted this comment. In 1.00C6d (*Hand-held assistive devices*) and 101.C6d (*Hand-held assistive devices*), we clarified that hand-held assistive devices are devices you hold onto, not carry, with your hands.

Comment: One commenter expressed that the statement in 1.00C6d (*Hand-held assistive devices*) about the need for evidence from a medical source describing how the person walks when using a hand-held assistive device is vague and open to interpretation.

Response: We did not make changes in response to this comment. Depending on the specific musculoskeletal impairment causing the functional limitation, there is variability in the type of device being used, how a person uses an assistive device, and how this device affects mobility. Requiring specific details from the medical source may not adequately address the facts in an individual case. For these reasons, we are intentionally leaving the type of description provided to the discretion of the medical source rather than prescribing a specific type of description. This allows the medical source necessary flexibility in providing a description.

Comment: Many commenters suggested we explain in 1.00D (*How do we consider symptoms, including pain, under these listings?*) and 101.00D (*How do we consider symptoms, including pain, under these listings?*) of the introductory text of the listings that a lack of opioid prescription or a person's attempt to reduce or avoid opioid use does not indicate the severity of a musculoskeletal disorder.

Response: In 1.00C5b (*Response to treatment*) and 101.00C5b (*Response to treatment*), we clarified that a person's musculoskeletal disorder may meet or medically equal one of these listings regardless of whether the person was prescribed opioid medication, or whether the person was prescribed opioid medication and did not follow this prescribed treatment. In addition to how we consider opioids in the context of treatment, in 1.00D (*How do we consider symptoms, including pain, under these listings?*) and 101.00D (*How do we consider symptoms, including pain, under these listings?*), we explain how we consider symptoms, including

pain, under these listings. The disability program rules require the presence of a medically determinable impairment that could reasonably be expected to produce the symptoms (including pain), a description of the person's medications (see 1.00C5b (*Response to treatment*)) and 101.00C5b (*Response to treatment*)), and the effects of those medications on the allegations of pain. Our regulations in 20 CFR 404.1529 and 416.929 and Social Security Ruling (SSR) 16–3p: Titles II and XVI: Evaluation of Symptoms in Disability Claims,²² explain how we evaluate symptoms, including pain, in disability adjudication.

Our rules about the failure to follow prescribed treatment are found in 20 CFR 404.1530 and 416.930, with additional guidance found in SSR 18–3p: Titles II and XVI: Failure to Follow Prescribed Treatment.²³ If a person is prescribed opioid medication, and chooses to not take the medication, we consider these rules for any medical condition(s), not just musculoskeletal disorders. SSR 18–3p specifically references the “risk of addiction to opioid medication” as an example of a “good cause” reason for not following prescribed treatment with opioid medication.²⁴ We further note that the musculoskeletal disorders listings are used at step three of our sequential evaluation process, and are used to establish medical criteria to help expedite allowances. Therefore, we do not deny adult claims at this step for any reason and only deny childhood claims if the child's medically determinable impairment(s) does not meet, medically equal, or functionally equal the listings.²⁵

Comment: A number of commenters asked that we continue to consider obesity and its effects on the musculoskeletal system.

Response: We agree with the comments. We have not changed our policy on evaluating obesity. We consider all medically determinable impairments when we evaluate claims for disability purposes. If obesity is a

medically determinable impairment, we consider its effects on functioning throughout the sequential evaluation process. These final rules do not eliminate or prevent our consideration of obesity. We added section 1.00Q (*How do we consider the effects of obesity when we evaluate your musculoskeletal disorder?*), which explains that the combined effects of obesity with musculoskeletal impairments can be greater than the effects of each impairment considered separately. We also provide guidance in SSR 19–2p: Titles II and XVI: Evaluating Cases Involving Obesity, which explains how we consider obesity in disability claims.²⁶ The removal of the prior section 1.00Q (*Effects of obesity*), which explained that the combined effects of obesity with musculoskeletal impairments can be greater than the effects of each impairment considered separately, does not change our policy on evaluating obesity.

Comment: One commenter asked how these rules account for fibromyalgia, considering there are no diagnostic tests for this condition; no clear physical, anatomical, or psychological abnormalities resulting from fibromyalgia; and that it is difficult to fully assess pain as part of a medical evaluation, which is particularly challenging given that pain is the primary presenting symptom of fibromyalgia.

Response: These final rules do not change how we consider fibromyalgia. Fibromyalgia is a complex medical condition characterized primarily by widespread pain in the joints, muscles, tendons, or nearby soft tissues that has persisted for at least 3 months. SSR 12–2p: Titles II and XVI: Evaluation of Fibromyalgia explains how we consider fibromyalgia in disability claims, including how we evaluate it at step 3 of our sequential evaluation process.²⁷ We consider all medically determinable impairments when we evaluate claims for disability purposes. Once fibromyalgia is established as a medically determinable impairment based on appropriate medical evidence, we consider its effects on functioning throughout the sequential evaluation process.

Comment: Several commenters disagreed with our introduction into the regulations of an explicit requirement that all applicable listing criteria must

²² 81 FR 14166 (03/16/16), 81 FR 15776 (03/24/16) (Correction), 82 FR 49462 (10/25/17) (Republished).

²³ SSR 18–3p: Titles II and XVI: Failure to Follow Prescribed Treatment. Available at: https://www.ssa.gov/OP_Home/rulings/di/02/SSR2018-03-di-02.html.

²⁴ SSR 18–3p: Titles II and XVI: Failure to Follow Prescribed Treatment. Available at: https://www.ssa.gov/OP_Home/rulings/di/02/SSR2018-03-di-02.html.

²⁵ We use a five-step sequential evaluation process to determine whether an adult is disabled under titles II and XVI. 20 CFR 404.1520 and 416.920. We use a different process to decide whether a child is disabled under title XVI of the Act. 20 CFR 416.924.

²⁶ SSR 19–2p: Titles II and XVI: Evaluating Cases Involving Obesity. Available at: https://www.ssa.gov/OP_Home/rulings/di/01/SSR2019-02-di-01.html.

²⁷ SSR 12–2p: Titles II and XVI: Evaluation of Fibromyalgia. Available at: https://www.ssa.gov/OP_Home/rulings/di/01/SSR2012-02-di-01.html.

be present simultaneously, and asked that we change our policy to reflect the holding with respect to prior 1.04A in *Radford v. Colvin*, 734 F.3d 288 (4th Cir. 2013).²⁸

Response: We did not adopt these comments. The holding of the Court of Appeals in *Radford* differs from our interpretation of the listing requirement, and is inconsistent with our understanding of the degree of severity requirements at step 3 of the sequential evaluation process.

In *Radford*,²⁹ the United States Court of Appeals for the Fourth Circuit held that Listing 1.04A required a claimant to show only “that each of the symptoms are present, and that the claimant has suffered or can be expected to suffer from nerve root compression continuously for at least 12 months.” Contrary to our policy that the requisite level of severity requires the simultaneous presence of all the medical criteria in paragraph A of former 1.04, the Court of Appeals held that a claimant need not show that each criterion was present simultaneously or in particularly close proximity. Because this holding was contrary to our policy, we issued AR 15–1(4), which implemented the Court of Appeals’ holding within the Fourth Circuit.³⁰

These final rules clarify our interpretation of the regulations. For a medically determinable impairment to meet a listing, the criteria must be present simultaneously to establish listing-level severity. Once that is established, evidence must show that this level of severity has lasted, or is expected to last, for at least 12 months.

We note that in reaching its conclusion in *Radford*, the Court of Appeals declined to give our interpretation deference because the agency had not previously published any regulation or other agency guidance

supporting our interpretation.³¹ The Court of Appeals also found that our interpretation was “plainly inconsistent with the text and structure of the regulation because the regulation said “nothing about a claimant’s need to show that the symptoms present simultaneously in the claimant or in close proximity to one another”³² Thus, the Court of Appeals decision itself does not preclude us from developing regulations to explicit state this requirement and establish national consistency. Furthermore, our acquiescence rules also allow us to subsequently clarify, modify, or revoke regulations that are the subject of a circuit holding that we determine conflicts with our interpretation of the regulations.³³ In accordance with these rules, we will rescind AR 15–1(4) when these final rules become effective.

Comment: These commenters also stated that the 4-month duration period, during which all of the relevant criteria must be present, if not “present simultaneously,” in the medical evidence, should not be a requirement for these listings, and that we should allow medical sources to opine whether the criteria occurred within a 4-month period regardless of whether these findings are actually recorded in the medical record. One commenter suggested that we change the 4-month period to a 6-month period.

Response: We did not adopt these comments. None of these commenters submitted any supporting research or data to justify such a change to these rules. The intention of a 4-month time period was to best ensure all relevant criteria are “present simultaneously,” while also providing leeway in cases where multiple visitations or examinations are necessary, such as when a physical examination might not have been performed or symptoms might not have been documented at a given appointment. In the absence of research or data to support these comments, we are not changing the 4-month period, which is consistent with the standard of care and common industry practice. For example, a 2012 study of over 100,000 patients with chronic lower back pain found that the median patient visited a physician office 10 times in the study year, with an interquartile range between 6 and 17 outpatient visits.³⁴ This is consistent

with a requirement to document all relevant criteria within a four-month duration can reasonably be accommodated by most patients’ routine visitation frequencies. As another example, a two-year study using data from the Medical Panel Expenditure Survey regarding utilization of healthcare showed that for people with spine disease, arthritis/joint disease, musculoskeletal injuries, and other musculoskeletal disease, the average total visits to physician and non-physician ambulatory services was greater in frequency than once every three months.³⁵ Other studies also suggest that for chronic ailments, including certain musculoskeletal disorders, re-visitation within 3–4 months is normative.³⁶

Moreover, it is generally perceived that providers are trained to schedule their patients for visits every 3 to 4 months routinely, regardless of disease severity.³⁷ This is further backed by clinical practice guidelines. For example, the Veteran’s Health Administration (VHA) and Department of Defense’s (DoD) *Clinical Practice Guideline for the Management of Medically Unexplained Symptoms: Chronic Pain and Fatigue* (2001) recommends “initially, a revisit at two to three weeks would be appropriate. As soon as the patient is doing well, then revisits every 3 to 4 months would be recommended.”³⁸ Similarly, the VHA/DoD 2017 guide *Clinical Practice Guideline for Diagnosis and Treatment of Low Back Pain* recommends reassessment monthly after initiation of therapy if low back pain continues and

³⁷(11), E668–E677. <https://doi.org/10.1097/BRS.0b013e318241e5de>.

³⁵ BMUS: The Burden of Musculoskeletal Diseases in the United States. In: BMUS: The Burden of Musculoskeletal Diseases in the United States [internet]. [cited 15 July 2020]. <https://www.boneandjointburden.org/fourth-edition/viic2/utilization-condition-group>.

³⁶ J Gen Intern Med. 1999 Apr; 14(4): 230–235. doi: 10.1046/j.1525–1497.1999.00322.x Lisa M. Schwartz, MD, MS, Steven Woloshin, MD, MS, John H. Wasson, MD, Roger A. Renfrew, MD, and H. Gilbert Welch, MD, MPH, Dartmouth Primary Care Cooperative Research Network¹.

³⁷ Bavafa, H., Savin, S., & Terwiesch, C. (2019). Redesigning Primary Care Delivery: Customized Office Revisit Intervals and E-Visits. <https://dx.doi.org/10.2139/ssrn.2363685> Paper referenced by Bavafa; Schectman, G., G. Barnas, P. Laud, L. Cantwell, M. Horton, E.J. Zarling, 2005. Prolonging the return visit interval in primary care. *The American Journal of Medicine*, 118(4) 393–399.

³⁸ Veterans Health Administration & Department of Defense. (2001). VHA/DoD Clinical Practice Guideline for the Management of Medically Unexplained Symptoms: Chronic Pain and Fatigue. https://www.healthquality.va.gov/guidelines/MR/mus/mus_fulltext.pdf (2001 VA Practice Guideline for Medically Unexplained Chronic Pain and Fatigue).

²⁸ Acquiescence Ruling (AR) 15–1(4): *Radford v. Colvin*, 734 F.3d 288 (4th Cir. 2013): Standard for Meeting Section 1.04A of the Listing of Impairments—Disorders of the Spine with Evidence of Nerve Root Compression—Titles II and XVI of the Social Security Act. Available at: https://www.ssa.gov/OP_Home/rulings/ar/04/AR2015-01-ar-04.html. The *Radford* Court held that “[a] claimant need not show that each symptom was present at precisely the same time—i.e., simultaneously—in order to establish the chronic nature of his condition. Nor need a claimant show that the symptoms were present in the claimant in particularly close proximity.”

²⁹ *Radford v. Colvin*, 734 F.3d 288 (4th Cir. 2013).

³⁰ Acquiescence Ruling (AR) 15–1(4): *Radford v. Colvin*, 734 F.3d 288 (4th Cir. 2013): Standard for Meeting Section 1.04A of the Listing of Impairments—Disorders of the Spine with Evidence of Nerve Root Compression—Titles II and XVI of the Social Security Act. Available at: https://www.ssa.gov/OP_Home/rulings/ar/04/AR2015-01-ar-04.html.

³¹ *Radford v. Colvin*, 734 F.3d at 294.

³² *Id.*

³³ 20 CFR 404.985(e)(4) and 416.1485(e)(4).

³⁴ Gore, M., Sadosky, A., Stacey, B.R., Tai, K.S., & Leslie, D. (2012). The burden of chronic low back pain: Clinical comorbidities, treatment patterns, and health care costs in usual care settings. *Spine*,

no serious specific underlying cause for low back pain is found.³⁹

We believe our review of available medical literature and clinical guidelines reflects the appropriateness of selecting a 4-month time period. We recognize that one routine visit alone does not necessarily ensure that all necessary criterion for a medical listing are appropriately documented; however the 4-month time period provides sufficient buffer to ensure the criteria are present within a close proximity of time.

We cannot accept a medical opinion that opines that otherwise undocumented medical findings would have occurred during a 4-month period in the absence of any other supporting evidence to bolster that view. We note that when prescribing how we should consider medical opinions, our existing regulations⁴⁰ make clear that the most important factors are supportability and consistency. The medical opinions must be supportive of and consistent with other evidence in the case file for us to find them persuasive.

Comment: Several commenters expressed concern about the criterion for imaging in 1.15C (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*), 1.16C (*Lumbar spinal stenosis resulting in compromise of the cauda equina*), 101.15C (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*), and 101.16C (*Lumbar spinal stenosis resulting in compromise of the cauda equina*). These comments noted that there may be people eligible for disability under current rules who may not be able to afford medical imaging or feel that medical imaging is necessary to treat their condition. These commenters asked that we remove this criterion because many claimants cannot afford imaging.

Response: We do not believe that final rule introduces new medical imaging requirements that were not already present under existing rules. Current 1.04 (*Disorders of the spine*) establishes three potential means for meeting the medical listing. Current 1.04C (*Disorders of the spine*) explicitly requires appropriate medically acceptable imaging. Current 1.04B (*Disorders of the spine*) pertains to spinal arachnoiditis and explicitly requires medical imaging, an operative note, or pathology report of tissue

biopsy. As discussed elsewhere in this preamble, spinal arachnoiditis is more appropriately evaluated under the neurological body system (for example, under listings 11.08 (*Spinal cord disorders*) and 111.08 (*Spinal cord disorders*) and will be assessed using the requirements in the neurological listings. Finally, current 1.04A does not have an explicit medical imaging requirement. In full, 1.04A reads: “[e]vidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine)”. Despite not having an explicit medical imaging requirement, under current adjudication policy we would always consider the “evidence of nerve root compression” required in 1.04A to necessarily include medical imaging. Because of this, while 1.15 is more explicit than 1.04A in its requirements pertaining to medical imaging, it does not impose any new medical imaging requirements nor does it impose additional costs on applicants.

Comment: One commenter asked that we replace the medical term “cauda equina involvement” with “nerve root impingement,” since “nerve root impingement” is more commonly used in the medical community.

Response: The term “nerve root impingement” is not interchangeable with “cauda equina involvement,” so we did not make changes in response to this comment. As we explain in 1.00F (*What do we consider when we evaluate disorders of the skeletal spine resulting in compromise of a nerve root(s) (1.15)?*) and 101.00F (*What do we consider when we evaluate disorders of the skeletal spine resulting in compromise of a nerve root(s) (101.15)?*), “compromise of a nerve root,” which is an alternative term to “nerve root impingement,” is used when a physical object is pushing on the nerve root and results in related symptoms that follow the path of the affected nerve root. Compromise of the cauda equina, as we explain in 1.00G (*What do we consider when we evaluate lumbar spinal stenosis resulting in compromise of the cauda equina (1.16)?*) and 101.00G (*What do we consider when we evaluate lumbar spinal stenosis resulting in compromise of the cauda equina (101.16)?*), involves the bundle of nerves descending from the lower part of the spinal cord and typically results in nonradicular pain, because it is not associated with a specific nerve root.

Comment: One commenter suggested that we incorporate impairment of the muscles controlling joint movements into 1.00I (*What do we consider when we evaluate abnormality of a major joint(s) in any extremity (1.18)?*) and that we should consider how these impairments impact function.

Response: These suggestions are already included in the introductory text and listing criteria for 1.18 (*Abnormality of a major joint(s) in any extremity*). In 1.00I1 (*What do we consider when we evaluate abnormality of a major joint(s) in any extremity (1.18)?*), we indicate that “[a]bnormalities of the joints include ligamentous laxity or rupture, soft tissue contracture, or tendon rupture and can cause muscle weakness of the affected joint(s).” We explain functional abnormality in 1.00I1b (*What do we consider when we evaluate abnormality of a major joint(s) in any extremity (1.18)?*).

Comment: Several commenters asked that we insert “at or” before “above the wrists” because amputation at the wrists causes essentially identical functional limitations as amputation just above the wrists.

Response: We agree with the comments. In 1.00K2 (*Amputation of both upper extremities*), 1.20A (*Amputation due to any cause*), 101.00K2 (*Amputation of both upper extremities*), and 101.20A (*Amputation due to any cause*), we added “at or” before “above the wrists.”

Comment: Several commenters suggested we combine the proposed criteria in 1.15A and B (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) and 101.15A and B (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) and “allow them to be satisfied when at least one of the following neuroanatomically-distributed (radicular) symptoms is present: . . . pain; limitation of motion of the spine; muscle weakness or fatigue; signs of nerve root irritation, tension, or compression; and paresthesias.”

Response: We did not adopt these comments. The commenters mischaracterized muscle weakness and signs of nerve root irritation, tension, or compression as “symptoms” of disorders of the skeletal spine resulting in compromise of a nerve root(s). These are, in fact, medical *signs*. The commenters’ suggestion would conflate the symptoms and signs of skeletal spine disorders. The separation of symptoms and signs into two distinct criteria is appropriate given our requirements establishing a medically

³⁹ Veterans Health Administration & Department of Defense. (2017). VA/DoD Clinical Practice Guideline for Diagnosis and Treatment of Low Back Pain. <https://www.healthquality.va.gov/guidelines/Pain/lbp/VADoDLBP/CPG092917.pdf> (Module B in document).

⁴⁰ 20 CFR 404.1520b and 404.1520c.

determinable impairment.⁴¹ SSA defines a symptom as one's own description of a physical or mental impairment(s),⁴² whereas a sign is one or more anatomical, physiological, or psychological abnormalities that can be observed apart from one's own statements. Signs must be "shown by accepted medically acceptable clinical diagnostic techniques."⁴³

Comment: Several commenters suggested that we remove the functional criteria for 1.15 (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) and 101.15 (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*). For example, they argued that the skeletal spine disorder would have serious limitations that would be disabling without any accompanying need for a hand-held assistive device (which we require for the skeletal spine disorder to be considered listing level).

Response: We agree that skeletal spine disorders can cause significant limitations. However, the signs and symptoms that are included in 1.15A and B (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) and 101.15A and B (*Disorders of the skeletal spine resulting in compromise of a nerve root(s)*) have a wide range of presentation. There can be a similarly wide range of limitations resulting from those signs and symptoms. The functional criteria are designed to specify the level of limitation that results in the inability to perform "any gainful activity," which is the level of severity required to meet or equal a listing.⁴⁴

Comment: Several commenters asked that we omit the functional criteria from 1.23 (*Non-healing or complex fracture of an upper extremity*) and 101.23 (*Non-healing or complex fracture of an upper extremity*), because the proposed criteria makes the new listings more difficult to meet or equal than the prior listings.

Response: We partially adopted this comment. Functional criteria continue to be an important part of establishing the inability to perform "any gainful activity," which is the level of severity required to meet or equal a listing.⁴⁵ We did, however, modify the criteria in 1.23 (*Non-healing or complex fracture of an upper extremity*) and 101.23 (*Non-healing or complex fracture of an upper extremity*) to remove the proposed criterion for the use of a hand-held assistive device, and to instead focus on

the inability to perform fine and gross movements that would be associated with non-union or complex fracture of an upper extremity.

Comment: Several commenters expressed that the functional criteria in 1.23 (*Non-healing or complex fracture of an upper extremity*) and 101.23 (*Non-healing or complex fracture of an upper extremity*) are "flawed because they fail to distinguish whether the dominant or non-dominant extremity is injured, which is a crucial distinction in terms of functional abilities and limitations."

Response: We did not make changes in response to this comment. Although the commenters are correct about the lack of distinction between the dominant and non-dominant upper extremity, the listings for musculoskeletal disorders have never considered the difference between a dominant and non-dominant extremity, because people can still use their non-dominant extremities. We more appropriately consider a distinction when we assess manipulative limitations in the residual functional capacity (at a later step in the disability determination process), since manipulations require more targeted motor skills and coordination, and the role of the dominant extremity is more important in that area.

Comment: Some commenters argued that listings 1.22 (*Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones*), 1.23 (*Non-healing or complex fracture of an upper extremity*), 101.22 (*Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones*), and 101.23 (*Non-healing or complex fracture of an upper extremity*) are not sufficient replacements for non-pathologic fractures due to the exclusion of fractures of bones such as the skull, ribs, and clavicle.

Response: We do not agree with these comments. First, listings 1.22 (*Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones*), 1.23 (*Non-healing or complex fracture of an upper extremity*), 101.22 (*Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones*), and 101.23 (*Non-healing or complex fracture of an upper extremity*) include the same types of fractures as current listings 1.06 (*Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones*), 1.07 (*Fracture of an upper extremity*), 101.06 (*Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones*), and 101.07 (*Fracture of an upper extremity*), which also did not include fractures of the skull, ribs,

and clavicle. Second, non-pathologic fractures likely result in impairments that are more appropriately evaluated under other listing criteria. For example, a fracture of the skull may accompany a traumatic brain injury, which is better considered under neurological listings 11.18 (*Traumatic brain injury*) and 111.18 (*Traumatic brain injury*), whereas fractures of the ribs or clavicle may result in soft tissue injury that is more appropriately considered under 1.21 (*Soft tissue injury or abnormality under continuing surgical management*) and 101.21 (*Soft tissue injury or abnormality under continuing surgical management*).

Comment: Several commenters suggested we should not limit the criteria for 1.19 (*Pathologic fractures due to any cause*) and 101.19 (*Pathologic fractures due to any cause*) to pathologic fractures, because the same functional limitations can result from both pathologic and non-pathologic fractures.

Response: We did not make changes as a result of these comments. As we explained in the NPRM, medical treatment and recovery expectations for fractures differ, depending on whether the condition is due to an underlying pathology (such as osteoporosis), or to a traumatic event. For this reason, we are adding separate listings for fractures caused by an underlying pathology to provide specific criteria in 1.19 (*Pathologic fractures due to any cause*) and 101.19 (*Pathologic fractures due to any cause*) related to evaluation and adjudication of pathologic fractures. We will evaluate complex or non-healing traumatic fractures under 1.22 (*Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones*), 1.23 (*Non-healing or complex fracture of an upper extremity*) (*Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones*), or 101.23 (*Non-healing or complex fracture of an upper extremity*).

Furthermore, the criterion in 1.19 (*Pathologic fractures due to any cause*) and 101.19 (*Pathologic fractures due to any cause*) for three fractures in a 12-month period is not appropriate for non-pathologic fractures. Each traumatic fracture constitutes a separate medically determinable impairment under our program rules, and each would need to be evaluated separately to determine whether the duration requirement is met. As we state in 20 CFR 404.1523(a) and 419.923(a), we cannot combine two or more unrelated severe impairments to meet the 12 month duration test. In contrast, multiple pathologic fractures over an extended period are considered

⁴¹ 20 CFR 404.1521 and 416.921.

⁴² 20 CFR 404.1502(i) and 416.902(i).

⁴³ 20 CFR 404.1502(g) and 416.902(g).

⁴⁴ 20 CFR 404.1525(a) and 416.925(a).

⁴⁵ Id.

related impairments because of the underlying medical condition (for example, osteoporosis).

Comment: One commenter expressed concern about children with a diagnosis of osteogenesis imperfecta, and suggested we revise the criteria to only require a “definitive diagnosis” of osteogenesis imperfecta with multiple fractures at one time, rather than the proposed requirement for fractures on separate and distinct occasions.

Response: We did not make changes in response to this comment. Osteogenesis imperfecta is not the only cause of pathologic fractures evaluated under 101.19 (*Pathologic fractures due to any cause*). Other causes include osteoporosis, other skeletal dysplasias, side effects of medications, and disorders of the endocrine system. The criteria for pathological fractures need to be appropriate for pathologic fractures and not just for one condition that has variable effects such as osteogenesis imperfecta. The terminology “definitive diagnosis” would contradict our other regulations. Our regulations require a medically determinable impairment established by objective medical evidence. We specifically state that we do not use a diagnosis to establish the existence of an impairment.⁴⁶ Once we establish the presence of a severe medically determinable impairment, we then determine whether the level of impairment results in the inability to perform “any gainful activity,” which is the level of severity required to meet or equal a listing.⁴⁷ A “definitive diagnosis” is not, on its own, indicative of listing level severity.

We describe in 101.00J (*What do we consider when we evaluate pathologic fractures due to any cause (101.19)?*) that osteogenesis imperfecta is one of the conditions that might result in pathologic fractures. Osteogenesis imperfecta is a genetic disease that can manifest at differing levels of severity. For this reason, there is a recognized classification system for the disorder, from type 1 to type 4, to differentiate between the clinical characteristics of each type.⁴⁸ The requirement in 101.19 (*Pathologic fractures due to any cause*) is that the fractures “must occur on separate, distinct occasions, rather than multiple fractures occurring at the same time, but they may affect the same bone(s) multiple times. There is no required period between the incidents of fracture(s), but they must all occur

within a 12-month period; for example, separate incidents may occur within hours or days of each other. However, the associated limitation(s) of function must last, or be expected to last, at least 12 months.” This criterion ensures that the severity of the osteogenesis imperfecta, or any other types of pathological fractures, rises to the level required.

Comment: One commenter asked that we clarify when we adjust a child’s age for prematurity.

Response: We did not make any changes in the final rules based on this comment. In 101.00O2a (*Severity of motor development delay*), we provide a citation to 20 CFR 416.924b(b), which explains at length our rules for correcting the chronological age of premature infants. We have not changed those rules here; as such, we direct the commenter to the rules cited above.

Comment: One commenter expressed concern that the listing will “favor or encourage claimants to engage in medical treatment that they would not otherwise engage in” and that “claimants should make treatment decisions with their medical providers and the other consideration should be whether or not the treatment may be beneficial and if the potential benefits outweigh any risks.” A similar comment outlined a series of examples of clients who were found eligible at Step 3 under current rules but who the commenter does not believe would be found eligible at Step 3 under this final rule and would therefore need to move on to subsequent steps in the sequential evaluation process.

Response: We did not make changes in response to this comment. In fact, the Act specifically prevents us from interfering with medical practice.⁴⁹ At no point do we instruct or require that any form of treatment be prescribed, which would violate the cited section of the Act. We only state that in some cases, we consider some items (for example, the use of handheld assistive devices, for certain disorders) or treatments to be effective functional indicators of the presence of a particular musculoskeletal disorder. However, it is understood that if a person is engaging in medical treatment, that treatment must be prescribed by a medical source, and that source will have documented the need for the treatment or assistive

device. We do not believe that this requirement will cause the affected public to pursue a different course of treatment than they otherwise would have under our existing rules.

We also note that many of our medical listings include a functional limitation component, and in the case of certain musculoskeletal disorders, we believe the use of certain treatments or assistive devices is the only objective functional component we can assess. We do not believe that this requirement will cause the affected public to pursue a different course of treatment than they otherwise would have, including the purchase of assistive devices, for people who may seek to apply for disability. This rule requires only the documented medical need for the assistive device, not the ownership of the device. We do not believe that this final rule will result in people, who previously had a documented medical need for an assistive device but who had chosen not to in consultation with their physician due to a perceived lack of benefit (for example, because they are confined to bed) purchase and assistive device to satisfy the functional requirements of this rule. Conversely, a person without a documented medical need for an assistive device in their record will continue to be evaluated under steps 4 and 5 of the disability determination process even if they are not found eligible at step 3.

Comment: One commenter expressed concern that we do not provide quantitative data to show the validity of these listings, noting that many people engage in work even though their impairments meet the listing requirements. The commenter opined that this challenges the validity of using the listings to determine whether a person is disabled, and that the listings are in conflict with the statutory definition of disability. Several other commenters asserted that we do not provide any justification for making the substantial changes.

Response: We did not make any changes in the final rules based on these comments. Contrary to the commenters’ assertion that we did not provide justification or sources for our changes, our NPRM included a list of 64 references that we relied on in proposing these rules.⁵⁰ We also invited the public to comment on these references and the data contained within them. The listings help ensure that determinations and decisions of disability have a sound medical basis, that claimants receive equal treatment throughout the country, and that we can

⁴⁶ 20 CFR 404.1521 and 416.921.

⁴⁷ 20 CFR 404.1525(a) and 416.925(a).

⁴⁸ <https://radiopaedia.org/articles/osteogenesis-imperfecta-classification-1?lang=en>.

⁴⁹ Sec. 216(i)1: “Nothing in this title shall be construed as authorizing the Commissioner or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.”

⁵⁰ 83 FR 20646, 20656–58 (2019).

readily identify the majority of people who are disabled. The level of severity described in the listings is such that we consider a person, who is not engaging in substantial gainful activity (SGA) and has an impairment that meets or medically equals all of the criteria of the listing, is generally considered unable to do any work because of the medical impairment alone at step 3 of the sequential evaluation process. When such a person's impairment or combination of impairments meets or medically equals the level of severity described in the listing for the required duration, we will find the person disabled on the basis of medical facts alone in the absence of evidence to the contrary (for example, the actual performance of substantial gainful activity).

Comment: One commenter opined that our proposed revisions discriminate against the poor because the criteria in the listings depend on specific diagnoses that, in turn, require medical tests that many people cannot afford and that we will not purchase. The commenter notes that these tests are not specifically required by the listings, but that they still help establish disability for those people who are able to afford them.

Response: We did not make any changes in the final rules based on these comments. The Act and our regulations require a claimant to submit medical evidence to establish a medically determinable impairment. We use medical evidence generally accepted in the medical community and available in medical records to establish and determine the severity of an impairment. We consider all available evidence about all of a claimant's impairments, not just information about a particular allegation, such as a musculoskeletal condition. We may also purchase medical examinations or tests to obtain the evidence that we need.⁵¹ We may find a person disabled even if he or she does not have a medical diagnosis for his or her impairment(s) when applying for benefits, as long as we are able to establish a medically determinable severe physical or mental impairment or combination of impairments that meets the duration requirements.

Comment: Some commenters expressed concern that our proposed updates would ultimately result in more denials of claims at the initial and reconsideration levels.

Response: In some cases, the revised criteria may result in more denials of claims. However, our updated listing criteria most accurately reflect current medical thought in these areas. As well, we note that not all claimants applying on the basis of a musculoskeletal disorder will necessarily be denied because of these listings. In some cases, the impairment(s) also could be found to medically equal a listing (or, in the case of a child seeking SSI payments, functionally equal the listings). If an adult claimant's impairment(s) does not meet or medically equal any listing, in some cases he or she could be found disabled at a later step in the sequential evaluation process once we consider the person's residual functional capacity and the factors of age, education, and vocational experience and skills.

Comment: One commenter asserted that these rules will negatively affect current disability beneficiaries by taking away their benefits.

Response: When these rules become final, we will not terminate any person's disability benefits solely because we have revised these listings. We do not readjudicate previously decided cases when we revise our listings.

However, under the Act, we are required to periodically conduct continuing disability reviews (CDR) to determine whether beneficiaries are still disabled.⁵² When we conduct CDRs, we re-examine an existing beneficiary's or recipient's case using the Medical Improvement Review Standard (MIRS) to determine whether a person continues to meet the disability requirements of the Act.⁵³ When SSA applies the MIRS, our threshold inquiry is whether the beneficiary or recipient has an impairment that still meets that listing. So, if a disability beneficiary or recipient undergoes a CDR after these final rules become effective, the standards these rules contain could potentially be applied; theoretically, then, the new standards could contribute to the possibility of a cessation of benefits or payments. We again, note, however, that we would examine all relevant factors when conducting the CDR, just as we do during an initial or reconsideration claim. These include whether the impairment(s) meets or equals a listing, whether there has been medical improvement in the impairments present at the most recent favorable determination, and, if necessary, whether the person has the ability to engage in SGA, given his or her residual

functional capacity, and his or her age, education, and past work experience.

What is our authority to make rules and set procedures for determining whether a person is disabled under our statutory definition?

Under the Act, we have authority to make rules and regulations and to establish necessary and appropriate procedures to carry out such provisions.⁵⁴

How long will these final rules be in effect?

These final rules will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again. We will continue to monitor these rules to ensure that they continue to meet program purposes, and may revise them before the end of the 5-year period if warranted.

How we will implement these final rules?

We will begin to apply these final rules to new applications, pending claims, and CDRs, as appropriate, as of the effective date of these final rules.⁵⁵

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed the rules. Details about the economic impacts of our rules follow.

Anticipated Reduction in Transfer Payments Made by Our Programs:

In 2017, we conducted a case study covering about 1,400 initial DDS-level decisions, based on the proposed rules as developed at that time. The case study sample was stratified by specific musculoskeletal diagnosis category and included listing-level allowances as well as denials at the medical-vocational stage of the disability determination process. Implementation of this final rule would result in decisional changes relative to those made under current listings both from allowance to denial and from denial to allowance. Based on the results of the

⁵⁴ Sections 205(a), 702(a)(5), and 1631(d)(1) (42 U.S.C. 405(a), 902(a)(5), 1383(d)(1)).

⁵⁵ We will use the final rules beginning on its effective date. We will apply the final rules to new applications filed on or after the effective date, and to claims that are pending on and after the effective date. This means that we will use the final rules on and after its effective date in any case in which we make a determination or decision, including CDRs, as appropriate. 20 CFR 404.902 and 416.1402.

⁵¹ 20 CFR 404.1517, 404.1519, 404.1519a–404.1519f, 404.1519k, 416.917, 416.919, and 416.919a–419.919f.

⁵² 42 U.S.C. 421(i), 20 CFR 404.1589, 416.989.

⁵³ 42 U.S.C. 423(f), 20 CFR 404.1594, 416.994, 416.994a.

case study, we estimate that for the OASDI program, there would be a net annual reduction in allowances of about 260, the net effect of an estimated 480 annual changes from allowance to denial, and an estimated 220 annual changes from denial to allowance. This small shift is primarily driven by claimants who were allowed at the listing-level (Step 3) under existing regulations but whose case files do not contain medical evidence indicating they would meet the new assistive devices requirements in this final rule, because such documentation is not required under current rules. Under implementation of this final rule, some of these claimants would be expected to be able to provide this information under the new requirement, and would do so. We made a small adjustment to the case study results based on this expectation.

For the SSI program the estimates indicate a net increase in annual allowances of about 180, the net effect of an estimated 285 annual changes from denial to allowance, and an estimated 105 annual changes from allowance to denial. The results of the actuarial analysis using the case study results indicate a net reduction in OASDI benefit payments (\$263 million) and a net increase in Federal SSI payments (\$67 million) over the FY 2021 Budget projection period, FYs 2021–30.

Anticipated Administrative Costs to the Social Security Administration:

In calculating whether the implementation of these final rules will result in administrative costs or savings to the agency, we examine two sources: (1) Work-years and (2) direct financial administrative costs.

We define work-years as a measure of the SSA employee work time these final rules will cost or save during implementation of its policies. We calculate one work-year as 2,080 hours of labor, which represents the amount of hours one SSA employee works per year based on a standard 40-hour workweek.

We are estimating net administrative savings of less than \$2 million and 15 work years per year. The administrative savings result from fewer SSI appeals, fewer maintenance actions for OASDI beneficiaries, and administrative efficiencies from decisions made earlier in the sequential evaluation process. Because we project an increase in SSI allowances, we believe there will be fewer SSI appeals once the regulation is implemented. We estimate an increase in OASDI denials. Because more OASDI claims would be denied, there would be fewer OASDI actions to process such as change of address or payment

corrections. Offsetting administrative costs include those to process additional appeals for the net increase in OASDI claims that are denied, as well as costs to train Disability Determination Service (DDS) employees, and for increased maintenance-of-the-rolls actions from the net increase in SSI recipients. Although this rule results in, on net, slightly more overall denials than allowances when compared to the current regulations, because of the administrative efficiencies resulting from decisions made earlier in the sequential evaluation process, the overall impact to this rulemaking is a slight reduction in administrative costs.

Anticipated Costs to the Public

We do not believe there are any more than *de minimis* costs to the public associated with this rulemaking. First, as discussed earlier in responses to comments on the Notice of Proposed Rulemaking as well as in the *Paperwork Reduction Act* section below, we do not believe any of the requirements contained in this rulemaking will impose new additional costs outside of the normal course of business for applicants. We do not believe that the new rules induce any new medical imaging requirements and do not believe they will result in additional purchasing and documentation of assistive devices.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB designated these rules as major rules, as defined by 5 U.S.C. 804(2).

Executive Order 13132 (Federalism)

We analyzed these final rules in accordance with the principles and criteria established by Executive Order 13132, and determined that they will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that the final rules will not preempt any State law or State regulations or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 13771

Based upon the criteria established in Executive Order 13771 and M–17–21 (“Guidance Implementing E.O. 13771”), we consider this rule a transfer rule with no more than *de minimis* costs. As such, it is exempt from requirements under E.O. 13771.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact

on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These final rules comprehensively revise the regulatory criteria we use to evaluate musculoskeletal disorders, and will affect the OASDI and SSI programs. SSA uses multiple existing OMB-approved information collection (IC) tools to document disability claims for all body system disorders, including musculoskeletal disorders. However, because these ICs are not specific to any particular body system disorders, they do not require modification in any way as a result of these final rules. As well, the regulatory changes are not changing the frequency of reporting or the burden—including documentation—involved in musculoskeletal disability claims. So, we are not making any changes under the Paperwork Reduction Act as a result of these rules.

Below we list for informational purposes the ICs that SSA uses to collect information related to Musculoskeletal (and all other) disability Title II & Title XVI claims. However, for the reasons provided above, we are not modifying them in any way due to these final rules.

- OMB No. 0960–0579 (SSA–3368, Disability Report—Adult)
- OMB No. 0960–0577 (SSA–3820, Disability Report—Child)
- OMB No. 0960–0578 (SSA–3369, Work History Report)
- OMB No. 0960–0540 (SSA–3371, Pain Report—Child)
- OMB No. 0960–0681 (SSA–3373, Function Report—Adult)
- OMB No. 0960–0542 (SSA–3375, SSA–3376, SSA–3377, SSA–3378 and SSA–3379, Function Report—Child)
- OMB No. 0960–0635 (SSA–3380, Function Report—Adult—Third Party)
- OMB No. 0960–0623 (SSA–827, Authorization to Disclose Information to the Social Security Administration)
- OMB No. 0960–0598 (SSA–820 or SSA–821, Work Activity Report—Self Employed Person & Work Activity Report—Employee)
- OMB No. 0960–0144 (SSA–3441, Disability Report—Appeal)
- OMB No. 0960–0499 (SSA–3881, Questionnaire for Children Claiming SSI Benefits)
- OMB No. 0960–0720 (SSA–3830, Certification of Low Birth Weight for SSI Eligibility)

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—

Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, survivors, and disability insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability cash payments; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

The Commissioner of Social Security, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislative and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we are amending subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 as follows:

■ a. In the introductory text before part A, revise paragraph 2;

■ b. In part A:

■ i. Amend the table of contents for part A by revising the entry for section 1.00;

■ ii. Revise section 1.00;

■ iii. Revise paragraph 4.00G4b;

■ iv. Revise paragraphs 14.00C6 through 14.00C8, 14.00C12, 14.00D4c(i), 14.00D6a, 14.00D6e(i), and 14.00D6e(ii); and

■ v. Under section 14.00, revise listings 14.04B, 14.04C2, 14.05A, 14.09A, and 14.09B introductory text; and

■ c. In part B:

■ i. Amend the table of contents by revising the entry for section 101.00;

■ ii. Revise section 101.00;

■ iii. Revise paragraph 104.00F9b;

■ iv. Revise paragraph 109.00C;

■ v. Revise paragraphs 114.00C6 through 114.00C8, 114.00C12, 114.00D4c(ii), 114.00D6a, 114.00D6e(i), and 114.00D6e(ii); and

■ vi. Under section 114.00, revise listings 114.04B, 114.04C2, 114.05A, 114.09A, and 114.09B introductory text.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

2. Musculoskeletal Disorders (1.00 and 101.00): April 2, 2026.

* * * * *

Part A

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1.00 Musculoskeletal Disorders

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1.00 Musculoskeletal Disorders

A. Which musculoskeletal disorders do we evaluate under these listings?

1. We evaluate disorders of the skeletal spine (vertebral column) or of the upper or lower extremities that affect musculoskeletal functioning under these listings. We use the term “skeletal” when we are referring to the structure of the bony skeleton. The *skeletal spine* refers to the bony structures, ligaments, and discs making up the spine. We refer to the skeletal spine in some musculoskeletal listings to differentiate it from the *neurological spine* (see 1.00B1). Musculoskeletal disorders may be congenital or acquired, and may include deformities, amputations, or other abnormalities. These disorders may involve the bones or major joints; or the tendons, ligaments, muscles, or other soft tissues.

2. We evaluate soft tissue injuries (including burns) or abnormalities that are under continuing surgical management (see 1.00O1). The injuries or abnormalities may affect any part of the body, including the face and skull.

3. We evaluate curvatures of the skeletal spine that affect musculoskeletal functioning under 1.15. If a curvature of the skeletal spine is under continuing surgical management (see 1.00O1), we will evaluate it under 1.21 using our rules for determining medical equivalence. See §§ 404.1526 and 416.926 of this chapter.

B. Which related disorders do we evaluate under other listings?

1. We evaluate a disorder or injury of the skeletal spine that results in damage to, and neurological dysfunction of, the spinal cord and its associated nerves (for example, paraplegia or quadriplegia) under the listings in 11.00.

2. We evaluate inflammatory arthritis (for example, rheumatoid arthritis) under the listings in 14.00.

3. We evaluate curvatures of the skeletal spine that interfere with your ability to breathe under the listings in 3.00, impair myocardial function under the listings in 4.00, or result in social withdrawal or depression under the listings in 12.00.

4. We evaluate non-healing or pathological fractures due to cancer, whether it is a primary site or metastases, under the listings in 13.00.

5. We evaluate the leg pain associated with peripheral vascular claudication and foot ulceration associated with peripheral arterial disease under the listings in 4.00.

6. We evaluate burns that do not require continuing surgical management under the listings in 8.00.

C. What evidence do we need to evaluate your musculoskeletal disorder?

1. General. We need objective medical evidence from an acceptable medical source to establish that you have a medically determinable musculoskeletal disorder. We also need evidence from both medical and nonmedical sources, who can describe how you function, to assess the severity and duration of your musculoskeletal disorder. We will determine the extent and kinds of evidence we need from medical and nonmedical sources based on the individual facts about your disorder. For our basic rules on evidence, see §§ 404.1512, 404.1513, 404.1520b, 416.912, 416.913, and 416.920b of this chapter. For our rules on evidence about your symptoms, see §§ 404.1529 and 416.929 of this chapter.

2. Physical examination report(s). In the report(s) of your physical examination, we require a medical source's detailed description of the orthopedic, neurologic, or other objective clinical findings appropriate to your specific musculoskeletal disorder from his or her direct observations during your physical examination. We will not accept a report of your statements about your symptoms and limitations in place of the medical source's report of objective clinical findings. We will not use findings on imaging or other diagnostic tests (see 1.00C3) as a substitute for findings on physical examination.

a. When the medical source reports that a clinical test sign(s) is positive, unless we have evidence to the contrary, we will assume that he or she performed the test properly and accept the medical source's interpretation of the test. For example, we will assume a straight-leg raising test was conducted properly (that is, in sitting and supine positions), even if the medical source does not specify the positions in which the test was performed.

b. If you use an assistive device (see 1.00C6), the report must support the medical need for the device.

c. If your musculoskeletal disorder causes a reduction in muscle strength, the report must document measurement of the strength of the muscle(s) in question. The measurement should be based on a muscle strength grading system that is considered medically acceptable based on your age and impairments. For example, a grading system

of 0 to 5, with 0 indicating complete loss of strength and 5 indicating maximum strength or equivalent medically acceptable scale (see Table 1). Reduction in muscle strength is

demonstrated by evidence that your muscle strength is less than active range of motion (ROM) against gravity with maximum resistance. If the reduction in muscle strength

involves one or both of your hands, the report must also document measurements of grip and pinch strength.

TABLE 1—GRADING SYSTEM OF MUSCLE FUNCTION

Grade	Function of the muscle
0—None	No visible or palpable contraction.
1—Trace	Visible or palpable contraction with no motion.
2—Poor	Active ROM with gravity eliminated.
3—Fair	Active ROM against gravity only, without resistance.
4—Good	Active ROM against gravity, moderate resistance.
5—Normal	Active ROM against gravity, maximum resistance.

3. Imaging and other diagnostic tests.

a. *Imaging* refers to medical imaging techniques, such as x-ray, computed tomography (CT), magnetic resonance imaging (MRI), and radionuclide scanning. For the purpose of these listings, the imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder.

b. Findings on imaging must have lasted, or be expected to last, for a continuous period of at least 12 months.

c. Imaging and other diagnostic tests can provide evidence of physical abnormalities; however, these abnormalities may correlate poorly with your symptoms, including pain, or with your musculoskeletal functioning. Accordingly, we will not use findings on imaging or other diagnostic tests as a substitute for findings on physical examination about your ability to function, nor can we infer severity or functional limitations based solely on such tests.

d. For our rules on purchasing imaging and other diagnostic tests, see §§ 404.1519k, 404.1519m, 416.919k, and 416.919m of this chapter.

4. *Operative reports.* If you have had a surgical procedure, we need a copy of the operative report, including details of the findings at surgery and information about any medical complications that may have occurred. If we do not have the operative report, we need confirmatory evidence of the surgical procedure from a medical source (for example, detailed follow-up reports or notations in the medical records concerning the surgical procedure in your medical history).

5. Effects of treatment.

a. *General.* Treatments for musculoskeletal disorders may have beneficial or adverse effects, and responses to treatment vary from person to person. We will evaluate all of the effects of treatment (including surgical treatment, medications, and therapy) on the symptoms, signs, and laboratory findings of your musculoskeletal disorder, and on your musculoskeletal functioning.

b. *Response to treatment.* To evaluate your musculoskeletal functioning in response to treatment, we need the following: A description, including the frequency of the administration, of your medications; the type and frequency of therapy you receive; and a description of your response to treatment and any complications you experience related to your musculoskeletal disorder. The effects of

treatment may be temporary or long-term. We need information over a sufficient period to determine the effects of treatment on your current musculoskeletal functioning and permit reasonable projections about your future functioning. We will determine the amount of time that constitutes a sufficient period in consultation with a medical consultant on a case-by-case basis. In some cases, we will need additional evidence to make an assessment about your response to treatment. Your musculoskeletal disorder may meet or medically equal one of these listings regardless of whether you were prescribed opioid medication, or whether you were prescribed opioid medication and did not follow this prescribed treatment.

6. Assistive devices.

a. *General.* An assistive device, for the purposes of these listings, is any device that you use to improve your stability, dexterity, or mobility. An assistive device can be worn (see 1.00C6b and 1.00C6c), hand-held (see 1.00C6d), or used in a seated position (see 1.00C6e). When we use the phrase “documented medical need,” we mean that there is evidence from a medical source that supports your medical need for an assistive device (see 1.00C2b) for a continuous period of at least 12 months (see 1.00C6a). This evidence must describe any limitation(s) in your upper or lower extremity functioning and the circumstances for which you need to use the assistive device. We do not require that you have a specific prescription for the assistive device.

b. *Prosthesis(es).* A prosthesis is a wearable device, such as an artificial limb, that takes the place of an absent body part. If you have a prosthesis(es), we need evidence from a medical source documenting your ability to walk, or perform fine and gross movements (see 1.00E4), with the prosthesis(es) in place. When amputation(s) involves one or both lower extremities, it is not necessary for the medical source to evaluate your ability to walk without the prosthesis(es) in place. If you cannot use your prosthesis(es) due to complications affecting your residual limb(s), we need evidence from a medical source documenting the condition of your residual limb(s) and the medical basis for your inability to use the device(s).

c. *Orthosis(es).* An orthosis is a wearable device, such as a brace, that prevents or corrects a dysfunction or deformity by aligning or supporting the affected body part. If you have an orthosis(es), we need evidence from a medical source documenting your

ability to walk, or perform fine and gross movements (see 1.00E4), with the orthosis(es) in place. If you cannot use your orthosis(es), we need evidence from a medical source documenting the medical basis for your inability to use the device(s).

d. *Hand-held assistive devices.* Hand-held assistive devices include walkers, canes, or crutches, which you hold onto with your hand(s) to support or aid you in walking. When you use a one-handed, hand-held assistive device (such as a cane) with one upper extremity to walk and you cannot use your other upper extremity for fine or gross movements (see 1.00E4), the need for the assistive device limits the use of both upper extremities. If you use a hand-held assistive device, we need evidence from a medical source describing how you walk with the device.

e. *Wheeled and seated mobility devices.* Wheeled and seated mobility devices are assistive devices that you use in a seated position, such as manual wheelchairs, motorized wheelchairs, rollators, and power operated vehicles. If you use a wheeled and seated mobility device, we need evidence from a medical source describing the type of wheeled and seated mobility device that you use and how you use the assistive device including any customizations or modifications to the assistive device itself or for your use of the assistive device. For example, if you use a wheelchair that typically requires the use of both hands but has been customized for your use with one hand, then we will evaluate your use of the assistive device using the criteria in 1.00E3b and not 1.00E3a.

(i) *Wheeled and seated mobility devices involving the use of both hands.* Some wheeled and seated mobility devices involve the use of both hands to use the assistive device (for example, most manual wheelchairs). If you use a wheeled and seated mobility device that involves the use of both hands, then the need for the assistive device limits the use of both upper extremities.

(ii) *Wheeled and seated devices involving the use of one hand.* Some wheeled and seated mobility devices involve the use of one hand to use the assistive device (for example, most motorized wheelchairs). If you use a wheeled and seated mobility device that involves the use of one upper extremity and you cannot use your other upper extremity for fine or gross movements (see

1.00E4), then the need for the assistive device limits the use of both upper extremities.

7. Longitudinal evidence.

a. We generally need a longitudinal medical record to assess the severity and duration of your musculoskeletal disorder because the severity of symptoms, signs, and laboratory findings related to most musculoskeletal disorders may improve over time or respond to treatment. Evidence over an extended period will show whether your musculoskeletal functioning is improving, worsening, or unchanging.

b. For 1.15, 1.16, 1.17, 1.18, 1.20C, 1.20D, 1.22, and 1.23, all of the required criteria must be present simultaneously, or within a close proximity of time, to satisfy the level of severity needed to meet the listing. The phrase “within a close proximity of time” means that *all* of the relevant criteria must appear in the medical record within a consecutive 4-month period. When the criterion is imaging, we mean that we could reasonably expect the findings on imaging to have been present at the date of impairment or date of onset. For listings that use the word “and” to link the elements of the required criteria, the medical record must establish the simultaneous presence, or presence within a close proximity of time, of all the required medical criteria. Once this level of severity is established, the medical record must also show that this level of severity has continued, or is expected to continue, for a continuous period of at least 12 months.

8. Surgical treatment and physical therapy. For some musculoskeletal disorders, a medical source may recommend surgery or physical therapy (PT). If you have not yet had the recommended surgery or PT, we will not assume that these interventions will resolve your disorder or improve your functioning. We will assess each case on an individual basis. Depending on your response to treatment, or your medical sources’ treatment plans, we may defer our findings regarding the effect of surgery or PT, until a sufficient period has passed to permit proper consideration or judgment about your future functioning. When necessary, we will follow the rules on following prescribed treatment in §§ 404.1530 and 416.930 of this chapter, including consideration of your reasons for failure to follow prescribed treatment.

D. How do we consider symptoms, including pain, under these listings?

1. Musculoskeletal disorders may cause pain or other symptoms; however, your statements about your pain or other symptoms will not alone establish that you are disabled. We will not substitute an alleged or a reported increase in the intensity of a symptom, such as pain, no matter how severe, for a medical sign or diagnostic finding present in the listing criteria. Pain is included as just one consideration in 1.15A, 1.16A, and 1.18A, but it is not required to satisfy the criteria in 1.15, 1.16, and 1.18.

2. To consider your symptom(s), we require objective medical evidence from an acceptable medical source showing the existence of a medically determinable musculoskeletal impairment that we could reasonably expect to produce the symptom(s). See §§ 404.1529 and 416.929 of

this chapter for how we evaluate symptoms, including pain, related to your musculoskeletal disorder.

E. How do we use the functional criteria to evaluate your musculoskeletal disorder under these listings?

1. *General.* The functional criteria are based on impairment-related physical limitations in your ability to use both upper extremities, one or both lower extremities, or a combination of one upper and one lower extremity. The required impairment-related physical limitation of musculoskeletal functioning must have lasted, or be expected to last, for a continuous period of at least 12 months. We do not use the functional criteria in 1.20A, 1.20B, or 1.21.

2. *Work environment.* We use the relevant evidence that we have to evaluate your musculoskeletal functioning with respect to the work environment rather than the home environment. For example, an ability to walk independently at home without an assistive device does not, in and of itself, indicate an ability to walk without an assistive device in a work environment.

3. *Functional criteria.* A musculoskeletal disorder satisfies the functional criteria of a listing when the medical documentation shows the presence of at least one of the impairment-related limitations cited in the listing. The required impairment-related limitation of musculoskeletal functioning must be medically documented by one of the following:

a. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i));

b. An inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), and a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of your other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii));

c. An inability to use both upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4).

4. *Fine and gross movements.* *Fine* movements, for the purposes of these listings, involve use of your wrists, hands, and fingers; such movements include picking, pinching, manipulating, and fingering. *Gross* movements involve use of your shoulders, upper arms, forearms, and hands; such movements include handling, gripping, grasping, holding, turning, and reaching. Gross movements also include exertional abilities such as lifting, carrying, pushing, and pulling. Examples of performing fine and gross movements include, but are not limited to, taking care of personal hygiene, sorting and handling papers or files, and placing files in a file cabinet at or above waist level.

F. What do we consider when we evaluate disorders of the skeletal spine resulting in compromise of a nerve root(s) (1.15)?

1. *General.* We consider musculoskeletal disorders such as herniated nucleus

pulposus, spinal osteoarthritis (spondylosis), vertebral slippage (spondylolisthesis), degenerative disc disease, facet arthritis, and vertebral fracture or dislocation. Spinal disorders may cause cervical or lumbar spine dysfunction when abnormalities of the skeletal spine compromise nerve roots of the cervical spine, a nerve root of the lumbar spine, or a nerve root of both cervical and lumbar spines. We consider spinal nerve disorders that originate in the nervous system (for example, spinal arachnoiditis), under the neurological disorders body system, 11.00.

2. Compromise of a nerve root(s).

Compromise of a nerve root, sometimes referred to as “nerve root impingement,” is a phrase used when a physical object, such as a tumor, herniated disc, foreign body, or arthritic spur, is pushing on the nerve root as seen on imaging or during surgery. It can occur when a musculoskeletal disorder produces irritation, inflammation, or compression of the nerve root(s) as it exits the skeletal spine between the vertebrae. Related symptoms must be associated with, or follow the path of, the affected nerve root(s).

a. *Compromise of unilateral nerve root of the cervical spine.* Compromise of a nerve root as it exits the cervical spine between the vertebrae may affect the functioning of the associated upper extremity. The physical examination reproduces the related symptoms based on radicular signs and clinical tests appropriate to the specific cervical nerve root (for example, a positive Spurling test).

b. *Compromise of bilateral nerve roots of the cervical spine.* Although uncommon, if compromise of a nerve root occurs on both sides of the cervical spinal column, functioning of both upper extremities may be limited.

c. *Compromise of a nerve root(s) of the lumbar spine.* Compromise of a nerve root as it exits the lumbar spine between the vertebrae may limit the functioning of the associated lower extremity. The physical examination reproduces the related symptoms based on radicular signs and clinical tests. When a nerve root of the lumbar spine is compromised, we require a positive straight-leg raising test (also known as a Lasègue test) in both supine and sitting positions appropriate to the specific lumbar nerve root that is compromised.

G. What do we consider when we evaluate lumbar spinal stenosis resulting in compromise of the cauda equina (1.16)?

1. *General.* We consider how pain, sensory changes, and muscle weakness caused by compromise of the cauda equina due to lumbar spinal stenosis affect your functioning. The cauda equina is a bundle of nerve roots that descends from the lower part of the spinal cord. Lumbar spinal stenosis can compress the nerves of the cauda equina, causing sensory changes and muscle weakness that may affect your ability to stand or walk. Pain related to compromise of the cauda equina is nonradicular because it is not typically associated with a specific nerve root (as is radicular pain in the cervical or lumbar spine).

2. *Compromise of the cauda equina* due to lumbar spinal stenosis can affect your ability

to walk or stand because of neurogenic claudication (also known as pseudoclaudication), a condition usually causing nonradicular pain that starts in the low back and radiates bilaterally (or less commonly, unilaterally) into the buttocks and lower extremities (or extremity). Extension of the lumbar spine, which occurs when you walk or stand, may provoke the pain of neurogenic claudication. The pain may be relieved by forward flexion of the lumbar spine or by sitting. In contrast, the leg pain associated with peripheral vascular claudication results from inadequate arterial blood flow to a lower extremity. It occurs repeatedly and consistently when a person walks a certain distance and is relieved when the person rests.

H. *What do we consider when we evaluate reconstructive surgery or surgical arthrodesis of a major weight-bearing joint (1.17)?*

1. *General.* We consider reconstructive surgery or surgical arthrodesis when an acceptable medical source(s) documents the surgical procedure(s) and associated medical treatments to restore function of, or eliminate motion in, the affected major weight-bearing joint. Reconstructive surgery may be done in a single procedure or a series of procedures directed toward the salvage or restoration of functional use of the affected joint.

2. *Major weight-bearing joints* are the hip, knee, and ankle-foot. The ankle and foot are considered together as one major joint.

3. *Surgical arthrodesis* is the artificial fusion of the bones that form a joint, essentially eliminating the joint.

I. *What do we consider when we evaluate abnormality of a major joint(s) in any extremity (1.18)?*

1. *General.* We consider musculoskeletal disorders that produce anatomical abnormalities of major joints of the extremities, which result in functional abnormalities in the upper or lower extremities (for example, osteoarthritis, chronic infections of bones and joints, and surgical arthrodesis of a joint). Abnormalities of the joints include ligamentous laxity or rupture, soft tissue contracture, or tendon rupture, and can cause muscle weakness of the affected joint(s).

a. *An anatomical abnormality* is one that is readily observable by a medical source during a physical examination (for example, subluxation or contracture), or is present on imaging (for example, joint space narrowing, bony destruction, ankylosis, or deformity).

b. *A functional abnormality* is abnormal motion or instability of the affected joint(s), including limitation of motion, excessive motion (hypermobility), movement outside the normal plane of motion for the joint (for example, lateral deviation), or fixation of the affected joint(s).

2. *Major joint of an upper extremity* refers to the shoulder, elbow, and wrist-hand. We consider the wrist and hand together as one major joint.

3. *Major joint of a lower extremity* refers to the hip, knee, and ankle-foot. We consider the ankle and hindfoot together as one major joint.

J. *What do we consider when we evaluate pathologic fractures due to any cause (1.19)?* We consider pathologic fractures of the bones

in the skeletal spine, extremities, or other parts of the skeletal system. Pathologic fractures result from disorders that weaken the bones, making them vulnerable to breakage. Pathologic fractures may occur with osteoporosis, osteogenesis imperfecta or any other skeletal dysplasias, side effects of medications, and disorders of the endocrine or other body systems. Under 1.19, the fractures must have occurred on separate, distinct occasions, rather than multiple fractures occurring at the same time, but the fractures may affect the same bone(s) multiple times. There is no required time that must elapse between the fractures, but all three must occur within a 12-month period; for example, separate incidents may occur within hours or days of each other. We evaluate non-healing or complex traumatic fractures without accompanying pathology under 1.22 or 1.23.

K. *What do we consider when we evaluate amputation due to any cause (1.20)?*

1. *General.* We consider amputation (the full or partial loss or absence of any extremity) due to any cause including trauma, congenital abnormality or absence, surgery for treatment of conditions such as cancer or infection, or complications of peripheral vascular disease or diabetes mellitus.

2. *Amputation of both upper extremities (1.20A).* Under 1.20A, we consider upper extremity amputations that occur at any level at or above the wrists (carpal joints), up to and including disarticulation of the shoulder (glenohumeral) joint. If you have had both upper extremities amputated at any level at or above the wrists up to and including the shoulder, your impairment satisfies the duration requirement in §§ 404.1509 and 416.909 of this chapter. For amputations below the wrist, we will follow the rules described in 1.00S. We do not evaluate amputations below the wrist under 1.20A because the resulting limitation of function of the thumb(s), finger(s), or hand(s) will vary, depending on the extent of loss and corresponding effect on fine and gross movements.

3. *Hemipelvectomy or hip disarticulation (1.20B).* Under 1.20B, we consider hemipelvectomy, which involves amputation of an entire lower extremity through the sacroiliac joint, and hip disarticulation, which involves amputation of an entire lower extremity through the hip joint capsule and closure of the remaining musculature over the exposed acetabular bone. If you have had a hemipelvectomy or hip disarticulation, your impairment satisfies the duration requirement in §§ 404.1509 and 416.909 of this chapter.

4. *Amputation of one upper extremity and one lower extremity (1.20C).* Under 1.20C, we consider the amputation of one upper extremity at any level at or above the wrist and one lower extremity at or above the ankle. If you have a documented medical need for a one-handed, hand-held assistive device (such as a cane) or a wheeled and seated mobility device involving the use of one hand (such as a motorized wheelchair), then you must use your remaining upper extremity to hold the device, making the extremity unavailable to perform other fine and gross movements (see 1.00E4).

5. *Amputation of one lower extremity or both lower extremities with complications of the residual limb(s) (1.20D).* Under 1.20D, we consider the amputation of one lower extremity or both lower extremities at or above the ankle. We also consider the condition of your residual limb(s), whether you can wear a prosthesis(es) (see 1.00C6b), and whether you have a documented medical need (see 1.00C6a) for a hand-held assistive device(s) (see 1.00C6d) or a wheeled and seated mobility device (see 1.00C6e). If you have a non-healing residual limb(s) and are receiving ongoing surgical treatment expected to re-establish or improve function, and that ongoing surgical treatment has not ended, or is not expected to end, within at least 12 months of the initiation of the surgical management (see 1.00L), we evaluate your musculoskeletal disorder under 1.21.

L. *What do we consider when we evaluate soft tissue injuries or abnormalities under continuing surgical management (1.21)?*

1. *General.*

a. We consider any soft tissue injury or abnormality involving the soft tissues of the body, whether congenital or acquired, when an acceptable medical source(s) documents the need for ongoing surgical procedures and associated medical treatments to restore function of the affected body part(s) (see 1.00O1). Surgical management includes the surgery(ies) itself, as well as various post-surgical procedures, surgical complications, infections or other medical complications, related illnesses, or related treatments that delay your attainment of maximum benefit from therapy (see 1.00O2).

b. Surgical procedures and associated treatments typically take place over extended periods, which may render you unable to perform work-related activity on a sustained basis. To document such inability, we must have evidence from an acceptable medical source(s) confirming that the surgical management has continued, or is expected to continue, for at least 12 months from the date of the first surgical intervention. These procedures and treatments must be directed toward saving, reconstructing, or replacing the affected part of the body to re-establish or improve its function, and not for cosmetic appearances alone.

c. Examples include malformations, third- and fourth-degree burns, crush injuries, craniofacial injuries, avulsive injuries, and amputations with complications of the residual limb(s).

d. We evaluate skeletal spine abnormalities or injuries under 1.15 or 1.16, as appropriate. We evaluate abnormalities or injuries of bones in the lower extremities under 1.17, 1.18, or 1.22. We evaluate abnormalities or injuries of bones in the upper extremities under 1.18 or 1.23.

2. *Documentation.* In addition to the objective medical evidence we need to establish your soft tissue injury or abnormality, we also need all of the following medically documented evidence about your continuing surgical management:

a. Operative reports and related laboratory findings;

b. Records of post-surgical procedures;

c. Records of any surgical or medical complications (for example, related infections or systemic illnesses);

d. Records of any prolonged post-operative recovery periods and related treatments (for example, surgeries and treatments for burns);

e. An acceptable medical source's plans for additional surgeries; and

f. Records detailing any other factors that have delayed, or that an acceptable medical source expects to delay, the saving, restoring, or replacing of the involved part for a continuous period of at least 12 months following the initiation of the surgical management.

3. *Burns.* Third- and fourth-degree burns damage or destroy nerve tissue, reducing or preventing transmission of signals through those nerves. Such burns frequently require multiple surgical procedures and related therapies to re-establish or improve function, which we evaluate under 1.21. When burns are no longer *under continuing surgical management* (see 1.00O1), we evaluate the residual impairment(s). When the residual impairment(s) affects the musculoskeletal system, as often occurs in third- and fourth-degree burns, it can result in permanent musculoskeletal tissue loss, joint contractures, or loss of extremities. We will evaluate such impairments under the relevant musculoskeletal disorders listing, for example, 1.18 or 1.20. When the residual impairment(s) involves another body system, we will evaluate the impairment(s) under the listings in the relevant body system(s).

4. *Craniofacial injuries.* Surgeons may treat craniofacial injuries with multiple surgical procedures. These injuries may affect vision, hearing, speech, and the initiation of the digestive process, including mastication. When the craniofacial injury-related residual impairment(s) involves another body system(s), we will evaluate the impairment(s) under the listings in the relevant body system(s).

M. *What do we consider when we evaluate non-healing or complex fractures of the femur, tibia, pelvis, or one or more of the talocrural bones (1.22)?*

1. *Non-healing fracture.* A non-healing (nonunion) fracture is a fracture that has failed to unite completely. Nonunion is usually established when a minimum of 9 months has elapsed since the injury and the fracture site has shown no, or minimal, progressive signs of healing for a minimum of 3 months.

2. *Complex fracture.* A complex fracture is a fracture with one or more of the following:

- a. Comminuted (broken into many pieces) bone fragments;
- b. Multiple fractures in a single bone;
- c. Bone loss due to severe trauma;
- d. Damage to the surrounding soft tissue;
- e. Severe cartilage damage to the associated joint; or
- f. Dislocation of the associated joint.

3. When a complex fracture involves soft tissue damage, the treatment may involve continuing surgical management to restore or improve functioning. In such cases, we may evaluate the fracture(s) under 1.21.

N. *What do we consider when we evaluate non-healing or complex fracture of an upper extremity (1.23)?*

1. *Non-healing fracture.* A non-healing (nonunion) fracture is a fracture that has failed to unite completely. Nonunion is

usually established when a minimum of 9 months has elapsed since the injury and the fracture site has shown no, or minimal, progressive signs of healing for a minimum of 3 months.

2. *Complex fracture.* A complex fracture is a fracture with one or more of the following:

- a. Comminuted (broken into many pieces) bone fragments;
- b. Multiple fractures in a single bone;
- c. Bone loss due to severe trauma;
- d. Damage to the surrounding soft tissue;
- e. Severe cartilage damage to the associated joint; or
- f. Dislocation of the associated joint.

3. When a complex fracture involves soft tissue damage, the treatment may involve continuing surgical management to restore or improve functioning. In such cases, we may evaluate the fracture(s) under 1.21.

O. *How will we determine whether your soft tissue injury or abnormality or your upper extremity fracture is no longer under continuing surgical management or you have received maximum benefit from therapy?*

1. We will determine that your soft tissue injury or abnormality, or your upper extremity fracture, is no longer *under continuing surgical management*, as used in 1.21 and 1.23, when the last surgical procedure or medical treatment directed toward the re-establishment or improvement of function of the involved part has occurred.

2. We will determine that you have received *maximum benefit from therapy*, as used in 1.21, if there are no significant changes in physical findings or on appropriate imaging for any 6-month period after the last surgical procedure or medical treatment. We may also determine that you have received maximum benefit from therapy if your medical source(s) indicates that further improvement is not expected after the last surgical procedure or medical treatment.

3. When you have received maximum benefit from therapy, we will evaluate any impairment-related residual symptoms, signs, and laboratory findings (including those on imaging), any complications associated with your surgical procedures or medical treatments, and any residual limitations in your functioning (see 1.00S).

P. *How do we evaluate your musculoskeletal disorder if there is no record of ongoing treatment?*

1. Despite having a musculoskeletal disorder, you may not have received ongoing treatment, may have just begun treatment, may not have access to prescribed medical treatment, or may not have an ongoing relationship with the medical community. In any of these situations, you will not have a longitudinal medical record for us to review when we evaluate your disorder and we may ask you to attend a consultative examination to determine the severity and potential duration of your disorder. See §§ 404.1519a(b) and 416.919a(b) of this chapter.

2. In some instances, we may be able to assess the severity and duration of your musculoskeletal disorder based on your medical record and current evidence alone. If the information in your case record is not sufficient to show that you have a musculoskeletal disorder that meets the

criteria of one of the musculoskeletal disorders listings, we will follow the rules described in 1.00S.

Q. *How do we consider the effects of obesity when we evaluate your musculoskeletal disorder?* Obesity is a medically determinable impairment that is often associated with musculoskeletal disorders. Obesity increases stress on weight-bearing joints and may contribute to limitation of the range of motion of the skeletal spine and extremities. The combined effects of obesity with a musculoskeletal disorder can be greater than the effects of each of the impairments considered separately. We consider the additional and cumulative effects of your obesity when we determine whether you have a severe musculoskeletal disorder, a listing-level musculoskeletal disorder, a combination of impairments that medically equals the severity of a listed impairment, and when we assess your residual functional capacity.

R. *How do we evaluate your musculoskeletal disorder if there is evidence establishing a substance use disorder?* If we find that you are disabled and there is medical evidence in your case record establishing that you have a substance use disorder, we will determine whether your substance use disorder is a contributing factor material to the determination of disability. See §§ 404.1535 and 416.935 of this chapter.

S. *How do we evaluate musculoskeletal disorders that do not meet one of these listings?*

1. These listings are only examples of musculoskeletal disorders that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See §§ 404.1526 and 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth step and, if necessary, the fifth step of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter.

3. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

1.01 Category of Impairments, Musculoskeletal Disorders

1.15 *Disorders of the skeletal spine resulting in compromise of a nerve root(s)* (see 1.00F), documented by A, B, C, and D:

A. Neuro-anatomic (radicular) distribution of one or more of the following *symptoms* consistent with compromise of the affected nerve root(s):

- 1. Pain; or
- 2. Paresthesia; or
- 3. Muscle fatigue.

AND

B. Radicular distribution of neurological signs present during physical examination (see 1.00C2) or on a diagnostic test (see 1.00C3) and evidenced by 1, 2, and either 3 or 4:

1. Muscle weakness; and
2. Sign(s) of nerve root irritation, tension, or compression, consistent with compromise of the affected nerve root (see 1.00F2); and
3. Sensory changes evidenced by:
 - a. Decreased sensation; or
 - b. Sensory nerve deficit (abnormal sensory nerve latency) on electrodiagnostic testing; or
 4. Decreased deep tendon reflexes.

AND

C. Findings on imaging (see 1.00C3) consistent with compromise of a nerve root(s) in the cervical or lumbosacral spine.

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), *and* a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or
3. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4).

1.16 *Lumbar spinal stenosis resulting in compromise of the cauda equina* (see 1.00G), documented by A, B, C, *and* D:

A. Symptom(s) of neurological compromise manifested as:

1. Nonradicular distribution of pain in one or both lower extremities; or
2. Nonradicular distribution of sensory loss in one or both lower extremities; or
3. Neurogenic claudication.

AND

B. Nonradicular neurological signs present during physical examination (see 1.00C2) or on a diagnostic test (see 1.00C3) and evidenced by 1 and either 2 or 3:

1. Muscle weakness.
2. Sensory changes evidenced by:
 - a. Decreased sensation; or
 - b. Sensory nerve deficit (abnormal sensory nerve latency) on electrodiagnostic testing; or
 - c. Areflexia, trophic ulceration, or bladder or bowel incontinence.
3. Decreased deep tendon reflexes in one or both lower extremities.

AND

C. Findings on imaging (see 1.00C3) or in an operative report (see 1.00C4) consistent with compromise of the cauda equina with lumbar spinal stenosis.

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), *and* a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)).

1.17 *Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint* (see 1.00H), documented by A, B, *and* C:

A. History of reconstructive surgery or surgical arthrodesis of a major weight-bearing joint.

AND

B. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months.

AND

C. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)).

1.18 *Abnormality of a major joint(s) in any extremity* (see 1.00I), documented by A, B, C, *and* D:

A. Chronic joint pain or stiffness.

AND

B. Abnormal motion, instability, or immobility of the affected joint(s).

AND

C. Anatomical abnormality of the affected joint(s) noted on:

1. Physical examination (for example, subluxation, contracture, or bony or fibrous ankylosis); or
2. Imaging (for example, joint space narrowing, bony destruction, or ankylosis or arthrodesis of the affected joint).

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), *and* a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other

upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

3. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4).

1.19 *Pathologic fractures due to any cause* (see 1.00J), documented by A *and* B:

A. Pathologic fractures occurring on three separate occasions within a 12-month period.

AND

B. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), *and* a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

3. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4).

1.20 *Amputation due to any cause* (see 1.00K), documented by A, B, C, *or* D:

A. Amputation of both upper extremities, occurring at any level at or above the wrists (carpal joints), up to and including the shoulder (glenohumeral) joint.

OR

B. Hemipelvectomy or hip disarticulation.

OR

C. Amputation of one upper extremity, occurring at any level at or above the wrist (carpal joints), and amputation of one lower extremity, occurring at or above the ankle (talocrural joint), *and* medical documentation of at least *one* of the following:

1. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or
2. A documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) requiring the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or
3. The inability to use the remaining upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (1.00E4).

OR

D. Amputation of one or both lower extremities, occurring at or above the ankle (talocrural joint), with complications of the residual limb(s) that have lasted, or are

expected to last, for a continuous period of at least 12 months, *and* medical documentation of 1 and 2:

1. The inability to use a prosthesis(es); and
2. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)).

1.21 *Soft tissue injury or abnormality under continuing surgical management* (see 1.00L), documented by A, B, *and* C:

A. Evidence confirms continuing surgical management (see 1.00O1) directed toward saving, reconstructing, or replacing the affected part of the body.

AND

B. The surgical management has been, or is expected to be, ongoing for a continuous period of at least 12 months.

AND

C. Maximum benefit from therapy (see 1.00O2) has not yet been achieved.

1.22 *Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones* (see 1.00M), documented by A, B, *and* C:

A. Solid union not evident on imaging (see 1.00C3) and not clinically solid.

AND

B. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months.

AND

C. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)).

1.23 *Non-healing or complex fracture of an upper extremity* (see 1.00N), documented by A *and* B:

A. Nonunion or complex fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management (see 1.00O1) directed toward restoration of functional use of the extremity.

AND

B. Medical documentation of an inability to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4) that has lasted, or is expected to last, for a continuous period of at least 12 months.

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4.00 Cardiovascular System

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G. *Evaluating Peripheral Vascular Disease*

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4. *What is lymphedema and how will we evaluate it?*

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b. Lymphedema does not meet the requirements of 4.11, although it may medically equal the severity of that listing. We will evaluate lymphedema by considering whether the underlying cause meets or medically equals any listing or whether the lymphedema medically equals a cardiovascular listing, such as 4.11, or a musculoskeletal disorders listing, such as

1.18. If no listing is met or medically equaled, we will evaluate any functional limitations imposed by your lymphedema when we assess your residual functional capacity.

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14.00 Immune System Disorders

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C. Definitions

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6. *Documented medical need* has the same meaning as in 1.00C6a.

7. *Fine and gross movements* has the same meaning as in 1.00E4.

8. *Major joint of an upper or a lower extremity* has the same meaning as in 1.00I2 and 1.00I3.

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12. *Severe* means medical severity as used by the medical community. The term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter.

D. *How do we document and evaluate the listed autoimmune disorders?*

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4. *Polymyositis and dermatomyositis (14.05).*

* * * * *

c. * * *

(i) Weakness of your pelvic girdle muscles that results in your inability to rise independently from a squatting or sitting position or to climb stairs may be an indication that you are unable to walk without assistance. Weakness of your shoulder girdle muscles may result in your inability to perform lifting, carrying, and reaching overhead, and also may seriously affect your ability to perform activities requiring fine movements. We evaluate these limitations under 14.05A.

* * * * *

6. * * *

a. *General.* The spectrum of inflammatory arthritis includes a vast array of disorders that differ in cause, course, and outcome. Clinically, inflammation of major joints in an upper or a lower extremity may be the dominant manifestation causing difficulties with walking or fine and gross movements; there may be joint pain, swelling, and tenderness. The arthritis may affect other joints, or cause less limitation in walking or fine and gross movements. However, in combination with extra-articular features, including constitutional symptoms or signs (severe fatigue, fever, malaise, and involuntary weight loss), inflammatory arthritis may result in an extreme limitation.

* * * * *

e. * * *

(i) Listing-level severity in 14.09A and 14.09C1 is shown by the presence of an impairment-related physical limitation of functioning. In 14.09C1, if you have the required ankylosis (fixation) of your cervical or dorsolumbar spine, we will find that you have a listing-level impairment-related physical limitation in your ability to see in front of you, above you, and to the side, even

though you might not require bilateral upper limb assistance.

(ii) Listing-level severity in 14.09B, 14.09C2, and 14.09D is shown by inflammatory arthritis that involves various combinations of complications (such as inflammation or deformity, extra-articular features, repeated manifestations, and constitutional symptoms and signs) of one or more major joints in an upper or a lower extremity (see 14.00C8) or other joints. Extra-articular impairments may also meet listings in other body systems.

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14.01 Category of Impairments, Immune System Disorders

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14.04 *Systemic sclerosis (scleroderma).* As described in 14.00D3. With:

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B. One of the following:

1. Toe contractures or fixed deformity of one or both feet and medical documentation of at least *one* of the following:

a. A documented medical need (see 14.00C6) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7), and a documented medical need (see 14.00C6) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

2. Finger contractures or fixed deformity in both hands and medical documentation of an inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7); or

3. Atrophy with irreversible damage in one or both lower extremities and medical documentation of at least *one* of the following:

a. A documented medical need (see 14.00C6) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7), and a documented medical need (see 14.00C6) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

4. Atrophy with irreversible damage in *both* upper extremities and medical documentation of an inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7); or

C. Raynaud's phenomenon, characterized by:

* * * * *

2. Ischemia with ulcerations of toes or fingers and medical documentation of at least *one* of the following:

a. A documented medical need (see 14.00C6) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7), and a documented medical need (see 14.00C6) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

c. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7); or

* * * * *

14.05 *Polymyositis and dermatomyositis*. As described in 14.00D4. With:

A. Proximal limb-girdle (pelvic or shoulder) muscle weakness and medical documentation of at least *one* of the following:

1. A documented medical need (see 14.00C6) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or

2. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7), and a documented medical need (see 14.00C6) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

3. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7); or

* * * * *

14.09 *Inflammatory arthritis*. As described in 14.00D6. With:

A. Persistent inflammation or persistent deformity of:

1. One or more major joints in a lower extremity (see 14.00C8) and medical documentation of at least *one* of the following:

a. A documented medical need (see 14.00C6) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7), and a documented medical need (see 14.00C6) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated

mobility device involving the use of one hand (see 1.00C6e(ii)); or

2. One or more major joints in each upper extremity (see 14.00C8) and medical documentation of an inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 14.00C7); or

B. Inflammation or deformity in one or more major joints of an upper or a lower extremity (see 14.00C8) with:

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Part B

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101.00 Musculoskeletal Disorders

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101.00 Musculoskeletal Disorders

A. *Which musculoskeletal disorders do we evaluate under these listings?*

1. We evaluate disorders of the skeletal spine (vertebral column) or of the upper or lower extremities that affect musculoskeletal functioning under these listings. We use the term "skeletal" when we are referring to the structure of the bony skeleton. The *skeletal spine* refers to the bony structures, ligaments, and discs making up the spine. We refer to the skeletal spine in some musculoskeletal listings to differentiate it from the *neurological spine* (see 101.00B1). Musculoskeletal disorders may be congenital or acquired, and may include deformities, amputations, or other abnormalities. These disorders may involve the bones or major joints; or the tendons, ligaments, muscles, or other soft tissues.

2. We evaluate soft tissue injuries (including burns) or abnormalities that are under continuing surgical management (see 101.00P1). The injuries or abnormalities may affect any part of the body, including the face and skull.

3. We evaluate curvatures of the skeletal spine that affect musculoskeletal functioning under 101.15. If a curvature of the skeletal spine is under continuing surgical management (see 101.00P1), we will evaluate it under 101.21 using our rules for determining medical equivalence. See § 416.926 of this chapter.

B. *Which related disorders do we evaluate under other listings?*

1. We evaluate a disorder or injury of the skeletal spine that results in damage to, and neurological dysfunction of, the spinal cord and its associated nerves (for example, paraplegia or quadriplegia) under the listings in 111.00.

2. We evaluate inflammatory arthritis (for example, rheumatoid arthritis) under the listings in 114.00.

3. We evaluate curvatures of the skeletal spine that interfere with your ability to breathe under the listings in 103.00, impair myocardial function under the listings in 104.00, or result in social withdrawal or depression under the listings in 112.00.

4. We evaluate non-healing or pathological fractures due to cancer, whether it is a primary site or metastases, under the listings in 113.00.

5. We evaluate the leg pain associated with peripheral vascular claudication under the listings in 104.00.

6. We evaluate burns that do not require continuing surgical management under the listings in 108.00.

C. *What evidence do we need to evaluate your musculoskeletal disorder?*

1. *General*. We need objective medical evidence from an acceptable medical source to establish that you have a medically determinable musculoskeletal disorder. We also need evidence from both medical and nonmedical sources, who can describe how you function, to assess the severity and duration of your musculoskeletal disorder. We will determine the extent and kinds of evidence we need from medical and nonmedical sources based on the individual facts about your disorder. For our basic rules on evidence, see §§ 416.912, 416.913, and 416.920b of this chapter. For our rules on evidence about your symptoms, see § 416.929 of this chapter.

2. *Physical examination report(s)*. In the report(s) of your physical examination, we require a medical source's detailed description of the orthopedic, neurologic, or other objective clinical findings appropriate to your specific musculoskeletal disorder from his or her direct observations during your physical examination. We will not accept a report of your statements about your symptoms and limitations in place of the medical source's report of objective clinical findings. We will not use findings on imaging or other diagnostic tests (see 101.00C3) as a substitute for findings on physical examination.

a. When the medical source reports that a clinical test sign(s) is positive, unless we have evidence to the contrary, we will assume that he or she performed the test properly and accept the medical source's interpretation of the test. For example, we will assume a straight-leg raising test was conducted properly (that is, in sitting and supine positions), even if the medical source does not specify the positions in which the test was performed.

b. If you use an assistive device (see 101.00C6), the report must support the medical need for the device.

c. If your musculoskeletal disorder causes a reduction in muscle strength, the report must document measurement of the strength of the muscle(s) in question. The measurement should be based on a muscle strength grading system that is considered medically acceptable based on your age and impairments. For example, a grading system of 0 to 5, with 0 indicating complete loss of strength and 5 indicating maximum strength or equivalent medically acceptable scale (see Table 1). Reduction in muscle strength is demonstrated by evidence that your muscle strength is less than active range of motion (ROM) against gravity with maximum resistance. If the reduction in muscle strength involves one or both of your hands, the report must also document measurements of grip and pinch strength.

TABLE 1—GRADING SYSTEM OF MUSCLE FUNCTION

Grade	Function of the muscle
0—None	No visible or palpable contraction.
1—Trace	Visible or palpable contraction with no motion.
2—Poor	Active ROM with gravity eliminated.
3—Fair	Active ROM against gravity only, without resistance.
4—Good	Active ROM against gravity, moderate resistance.
5—Normal	Active ROM against gravity, maximum resistance.

3. *Imaging and other diagnostic tests.*

a. *Imaging* refers to medical imaging techniques, such as x-ray, computed tomography (CT), magnetic resonance imaging (MRI), and radionuclide scanning. For the purpose of these listings, the imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder.

b. Findings on imaging must have lasted, or be expected to last, for a continuous period of at least 12 months.

c. Imaging and other diagnostic tests can provide evidence of physical abnormalities; however, these abnormalities may correlate poorly with your symptoms, including pain, or with your musculoskeletal functioning. Accordingly, we will not use findings on imaging or other diagnostic tests as a substitute for findings on physical examination about your ability to function, nor can we infer severity or functional limitations based solely on such tests.

d. For our rules on purchasing imaging and other diagnostic tests, see §§ 416.919k and 416.919m of this chapter.

4. *Operative reports.* If you have had a surgical procedure, we need a copy of the operative report, including details of the findings at surgery and information about any medical complications that may have occurred. If we do not have the operative report, we need confirmatory evidence of the surgical procedure from a medical source (for example, detailed follow-up reports or notations in the medical records concerning the surgical procedure in your medical history).

5. *Effects of treatment.*

a. *General.* Treatments for musculoskeletal disorders may have beneficial or adverse effects, and responses to treatment vary from person to person. We will evaluate all of the effects of treatment (including surgical treatment, medications, and therapy) on the symptoms, signs, and laboratory findings of your musculoskeletal disorder, and on your musculoskeletal functioning.

b. *Response to treatment.* To evaluate your musculoskeletal functioning in response to treatment, we need the following: A description, including the frequency of the administration, of your medications; the type and frequency of therapy you receive; and a description of your response to treatment and any complications you experience related to your musculoskeletal disorder. The effects of treatment may be temporary or long-term. We need information over a sufficient period to determine the effects of treatment on your current musculoskeletal functioning and permit reasonable projections about your

future functioning. We will determine the amount of time that constitutes a sufficient period in consultation with a medical consultant on a case by case basis. In some cases, we will need additional evidence to make an assessment about your response to treatment. Your musculoskeletal disorder may meet or medically equal one of these listings regardless of whether you were prescribed opioid medication, or whether you were prescribed opioid medication and did not follow this prescribed treatment.

6. *Assistive devices.*

a. *General.* An assistive device, for the purposes of these listings, is any device that you use to improve your stability, dexterity, or mobility. An assistive device can be worn (see 101.00C6b and 101.00C6c), hand-held (see 101.00C6d), or used in a seated position (see 101.00C6e). When we use the phrase “documented medical need,” we mean that there is evidence from a medical source that supports your medical need for an assistive device (see 101.00C2b) for a continuous period of at least 12 months (see 101.00c2a). This evidence must describe any limitation(s) in your upper or lower extremity functioning and the circumstances for which you need to use the assistive device. We do not require that you have a specific prescription for the assistive device.

b. *Prosthesis(es).* A prosthesis is a wearable device, such as an artificial limb, that takes the place of an absent body part. If you have a prosthesis(es), we need evidence from a medical source documenting your ability to walk, or perform fine and gross movements (see 101.00E4), with the prosthesis(es) in place. When amputation(s) involves one or both lower extremities, it is not necessary for the medical source to evaluate your ability to walk without the prosthesis(es) in place. If you cannot use your prosthesis(es) due to complications affecting your residual limb(s), we need evidence from a medical source documenting the condition of your residual limb(s) and the medical basis for your inability to use the device(s).

c. *Orthosis(es).* An orthosis is a wearable device, such as a brace, that prevents or corrects a dysfunction or deformity by aligning or supporting the affected body part. If you have an orthosis(es), we need evidence from a medical source documenting your ability to walk, or perform fine and gross movements (see 101.00E4), with the orthosis(es) in place. If you cannot use your orthosis(es), we need evidence from a medical source documenting the medical basis for your inability to use the device(s).

d. *Hand-held assistive devices.* Hand-held assistive devices include walkers, canes, or crutches, which you hold onto with your

hand(s) to support or aid you in walking. When you use a one-handed, hand-held assistive device (such as a cane) with one upper extremity to walk and you cannot use your other upper extremity for fine or gross movements (see 101.00E4), the need for the assistive device limits the use of both upper extremities. If you use a hand-held assistive device, we need evidence from a medical source describing how you walk with the device.

e. *Wheeled and seated mobility devices.*

Wheeled and seated mobility devices are assistive devices that you use in a seated position, such as manual wheelchairs, motorized wheelchairs, rollators, and power operated vehicles. If you use a wheeled and seated mobility device, we need evidence from a medical source describing the type of wheeled and seated mobility device that you use and how you use the assistive device, including any customizations or modifications to the assistive device itself or for your use of the assistive device. For example, if you use a wheelchair that typically requires the use of both hands but has been customized for your use with one hand, then we will evaluate your use of the assistive device using the criteria in 101.00E3b and not 101.00E3a.

(i) *Wheeled and seated mobility devices involving the use of both hands.* Some wheeled and seated mobility devices involve the use of both hands to use the assistive device (for example, most manual wheelchairs). If you use a wheeled and seated mobility device that involves the use of both hands, then the need for the assistive device limits the use of both upper extremities.

(ii) *Wheeled and seated devices involving the use of one hand.* Some wheeled and seated mobility devices involve the use of one hand to use the assistive device (for example, most motorized wheelchairs). If you use a wheeled and seated mobility device that involves the use of one upper extremity and you cannot use your other upper extremity for fine or gross movements (see 101.00E4), then the need for the assistive device limits the use of both upper extremities.

7. *Longitudinal evidence.*

a. We generally need a longitudinal medical record to assess the severity and duration of your musculoskeletal disorder because the severity of symptoms, signs, and laboratory findings related to most musculoskeletal disorders may improve over time or respond to treatment. Evidence over an extended period will show whether your musculoskeletal functioning is improving, worsening, or unchanging.

b. For 101.15, 101.16, 101.17, 101.18, 101.20C, 101.20D, 101.22, and 101.23, all of the required criteria must be present simultaneously, or within a close proximity of time, to satisfy the level of severity needed to meet the listing. The phrase “within a close proximity of time” means that *all* of the relevant criteria must appear in the medical record within a consecutive 4-month period. When the criterion is imaging, we mean that we could reasonably expect the findings on imaging to have been present at the date of impairment or date of onset. For listings that use the word “and” to link the elements of the required criteria, the medical record must establish the simultaneous presence, or presence within a close proximity of time, of all the required medical criteria. Once this level of severity is established, the medical record must also show that this level of severity has continued, or is expected to continue, for a continuous period of at least 12 months.

8. *Surgical treatment or physical therapy.* For some musculoskeletal disorders, a medical source may recommend surgery, or physical therapy (PT). If you have not yet had the recommended surgery or PT, we will not assume that these interventions will resolve your disorder or improve your functioning. We will assess each case on an individual basis. Depending on your response to treatment, or your medical sources’ treatment plans, we may defer our findings regarding the effect of surgery or PT, until a sufficient period has passed to permit proper consideration or judgment about your future functioning. When necessary, we will follow the rules on following prescribed treatment in § 416.930 of this chapter, including consideration of your reasons for failure to follow prescribed treatment.

D. *How do we consider symptoms, including pain, under these listings?*

1. Musculoskeletal disorders may cause pain or other symptoms; however, your statements about your pain or other symptoms will not alone establish that you are disabled. We will not substitute an alleged or a reported increase in the intensity of a symptom, such as pain, no matter how severe, for a medical sign or diagnostic finding present in the listing criteria. Pain is included as just one consideration in 101.15A, 101.16A, and 101.18A, but it is not required to satisfy the criteria in 101.15, 101.16, and 101.18.

2. To consider your symptom(s), we require objective medical evidence from an acceptable medical source showing the existence of a medically determinable musculoskeletal impairment that we could reasonably expect to produce the symptom(s). See § 416.929 of this chapter for how we evaluate symptoms, including pain, related to your musculoskeletal disorder.

E. *How do we use the functional criteria to evaluate your musculoskeletal disorder under these listings?*

1. *General.* The functional criteria for children age 3 and older are based on impairment-related physical limitations in your ability to use both upper extremities, one or both lower extremities, or a combination of one upper and one lower extremity. We will use the relevant evidence

that we have to compare your musculoskeletal functioning to the functioning of children your age who do not have impairments. The required impairment-related physical limitation of musculoskeletal functioning must have lasted, or be expected to last, for a continuous period of at least 12 months. We do not use the functional criteria in 101.20A, 101.20B, 101.21, or 101.24.

2. *Medical and functional criteria, birth to attainment of age 3.* The medical and functional criteria for children in this age group are in 101.24.

3. *Functional criteria, age 3 to attainment of age 18.* The functional criteria are based on impairment-related physical limitations in your ability to use both upper extremities, one or both lower extremities, or a combination of one upper and one lower extremity. A musculoskeletal disorder satisfies the functional criteria of a listing when the medical documentation shows the presence of at least one of the impairment-related limitations cited in the listing. The functional criteria require impairment-related physical limitation of musculoskeletal functioning that has lasted, or can be expected to last, for a continuous period of at least 12 months, medically documented by one of the following:

a. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i));

b. An inability to use one upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4), and a documented medical need (see 101.00C6a) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of your other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii));

c. An inability to use both upper extremities to the extent that neither can be used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4).

4. *Fine and gross movements.* Fine movements, for the purposes of these listings, involve use of your wrists, hands, and fingers; such movements include picking, pinching, manipulating, and fingering. Gross movements involve use of your shoulders, upper arms, forearms, and hands; such movements include handling, gripping, grasping, holding, turning, and reaching. Gross movements also include exertional abilities such as lifting, carrying, pushing, and pulling.

F. *What do we consider when we evaluate disorders of the skeletal spine resulting in compromise of a nerve root(s) (101.15)?*

1. *General.* We consider musculoskeletal disorders such as skeletal dysplasias, caudal regression syndrome, tethered spinal cord syndrome, vertebral slippage (spondylolisthesis), scoliosis, and vertebral fracture or dislocation. Spinal disorders may cause cervical or lumbar spine dysfunction when abnormalities of the skeletal spine

compromise nerve roots of the cervical spine, a nerve root of the lumbar spine, or a nerve root of both cervical and lumbar spines. We consider spinal nerve disorders that originate in the nervous system (for example, spinal arachnoiditis), under the neurological disorders body system, 111.00.

2. *Compromise of a nerve root(s).*

Compromise of a nerve root, sometimes referred to as “nerve root impingement,” is a phrase used when a physical object, such as a tumor, herniated disc, foreign body, or arthritic spur, is pushing on the nerve root as seen on imaging or during surgery. It can occur when a musculoskeletal disorder produces irritation, inflammation, or compression of the nerve root(s) as it exits the skeletal spine between the vertebrae. Related symptoms must be associated with, or follow the path of, the affected nerve root(s).

a. *Compromise of unilateral nerve root of the cervical spine.* Compromise of a nerve root as it exits the cervical spine between the vertebrae may affect the functioning of the associated upper extremity. The physical examination reproduces the related symptoms based on radicular signs and clinical tests appropriate to the specific cervical nerve root (for example, a positive Spurling test).

b. *Compromise of bilateral nerve roots of the cervical spine.* Although uncommon, if compromise of a nerve root occurs on both sides of the cervical spinal column, functioning of both upper extremities may be limited.

c. *Compromise of a nerve root(s) of the lumbar spine.* Compromise of a nerve root as it exits the lumbar spine between the vertebrae may limit the functioning of the associated lower extremity. The physical examination reproduces the related symptoms based on radicular signs and clinical tests. When a nerve root of the lumbar spine is compromised, we require a positive straight-leg raising test (also known as a Lasègue test) in both supine and sitting positions appropriate to the specific lumbar nerve root that is compromised.

G. *What do we consider when we evaluate lumbar spinal stenosis resulting in compromise of the cauda equina (101.16)?*

1. *General.* We consider how pain, sensory changes, and muscle weakness caused by compromise of the cauda equina due to lumbar spinal stenosis affect your functioning. The cauda equina is a bundle of nerve roots that descends from the lower part of the spinal cord. Lumbar spinal stenosis can compress the nerves of the cauda equina, causing sensory changes and muscle weakness that may affect your ability to stand or walk. Pain related to compromise of the cauda equina is nonradicular because it is not typically associated with a specific nerve root (as is radicular pain in the cervical or lumbar spine).

2. *Compromise of the cauda equina* due to lumbar spinal stenosis can affect your ability to walk or stand because of neurogenic claudication (also known as pseudoclaudication), a condition usually causing nonradicular pain that starts in the low back and radiates bilaterally (or less commonly, unilaterally) into the buttocks

and lower extremities (or extremity). Extension of the lumbar spine, which occurs when you walk or stand, may provoke the pain of neurogenic claudication. The pain may be relieved by forward flexion of the lumbar spine or by sitting. In contrast, the leg pain associated with peripheral vascular claudication results from inadequate arterial blood flow to a lower extremity. It occurs repeatedly and consistently when a person walks a certain distance and is relieved when the person rests.

H. *What do we consider when we evaluate reconstructive surgery or surgical arthrodesis of a major weight-bearing joint (101.17)?*

1. *General.* We consider reconstructive surgery or surgical arthrodesis when an acceptable medical source(s) documents the surgical procedure(s) and associated medical treatments to restore function of, or eliminate motion in, the affected major weight-bearing joint(s). Reconstructive surgery may be done in a single procedure or a series of procedures directed toward the salvage or restoration of functional use of the affected joint.

2. *Major weight-bearing joints* are the hip, knee, and ankle-foot. The ankle and foot are considered together as one major joint.

3. *Surgical arthrodesis* is the artificial fusion of the bones that form a joint, essentially eliminating the joint.

I. *What do we consider when we evaluate abnormality of a major joint(s) in any extremity (101.18)?*

1. *General.* We consider musculoskeletal disorders that produce anatomical abnormalities of major joints of the extremities, which result in functional abnormalities in the upper or lower extremities (for example, chronic infections of bones and joints, and surgical arthrodesis of a joint). Abnormalities of the joints include ligamentous laxity or rupture, soft tissue contracture, or tendon rupture, and can cause muscle weakness of the affected joint(s).

a. An *anatomical* abnormality is one that is readily observable by a medical source during a physical examination (for example, subluxation or contracture), or is present on imaging (for example, joint space narrowing, bony destruction, ankylosis, or deformity).

b. A *functional* abnormality is abnormal motion or instability of the affected joint(s), including limitation of motion, excessive motion (hypermobility), movement outside the normal plane of motion for the joint (for example, lateral deviation), or fixation of the affected joint(s).

2. *Major joint of an upper extremity* refers to the shoulder, elbow, and wrist-hand. We consider the wrist and hand together as one major joint.

3. *Major joint of a lower extremity* refers to the hip, knee, and ankle-foot. We consider the ankle and hindfoot together as one major joint.

J. *What do we consider when we evaluate pathologic fractures due to any cause (101.19)?* We consider pathologic fractures of the bones in the skeletal spine, extremities, or other parts of the skeletal system. Pathologic fractures result from disorders that weaken the bones, making them vulnerable to breakage. Pathologic fractures may occur with osteoporosis, osteogenesis

imperfecta or any other skeletal dysplasias, side effects of medications, and disorders of the endocrine or other body systems. Under 101.19, the fractures must have occurred on separate, distinct occasions, rather than multiple fractures occurring at the same time, but the fractures may affect the same bone(s) multiple times. There is no required time that must elapse between the fractures, but all three must occur within a 12-month period; for example, separate incidents may occur within hours or days of each other. We evaluate non-healing or complex traumatic fractures without accompanying pathology under 101.22 or 101.23.

K. *What do we consider when we evaluate amputation due to any cause (101.20)?*

1. *General.* We consider amputation (the full or partial loss or absence of any extremity) due to any cause including trauma, congenital abnormality or absence, surgery for treatment of conditions such as cancer or infection, or complications of peripheral vascular disease or diabetes mellitus.

2. *Amputation of both upper extremities (101.20A).* Under 101.20A, we consider upper extremity amputations that occur at any level at or above the wrists (carpal joints), up to and including disarticulation of the shoulder (glenohumeral) joint. If you have had both upper extremities amputated at any level at or above the wrists up to and including the shoulder, your impairment satisfies the duration requirement in § 416.909 of this chapter. For amputations below the wrist, we will follow the rules described in 101.00R. We do not evaluate amputations below the wrists under 101.20A because the resulting limitation of function of the thumb(s), finger(s), or hand(s) will vary, depending on the extent of loss and corresponding effect on fine and gross movements.

3. *Hemipelvectomy or hip disarticulation (101.20B).* Under 101.20B, we consider hemipelvectomy, which involves amputation of an entire lower extremity through the sacroiliac joint, and hip disarticulation, which involves amputation of an entire lower extremity through the hip joint capsule and closure of the remaining musculature over the exposed acetabular bone. If you have had a hemipelvectomy or hip disarticulation, your impairment satisfies the duration requirement in § 416.909 of this chapter.

4. *Amputation of one upper extremity and one lower extremity (101.20C).* Under 101.20C, we consider the amputation of one upper extremity at any level at or above the wrist and one lower extremity at or above the ankle. If you have a documented medical need for a one-handed, hand-held assistive device (such as a cane) or a wheeled and seated mobility device involving the use of one hand (such as a motorized wheelchair), then you must use your remaining upper extremity to hold the device, making the extremity unavailable to perform other fine and gross movements (see 101.00E4).

5. *Amputation of one lower extremity or both lower extremities with complications of the residual limb(s) (101.20D).* Under 101.20D, we consider the amputation of one lower extremity or both lower extremities at or above the ankle. We also consider the

condition of your residual limb(s), whether you can wear a prosthesis(es) (see 101.00C6b), and whether you have a documented medical need (see 101.00C6a) for a hand-held assistive device(s) (see 101.00C6d) or a wheeled and seated mobility device (see 101.00C6e). If you have a non-healing residual limb(s) and are receiving ongoing surgical treatment expected to re-establish or improve function, and that ongoing surgical treatment has not ended, or is not expected to end, within at least 12 months of the initiation of the surgical management (see 101.00L), we evaluate your musculoskeletal disorder under 101.21.

L. *What do we consider when we evaluate soft tissue injury or abnormality under continuing surgical management (101.21)?*

1. *General.*

a. We consider any soft tissue injury or abnormality involving the soft tissues of the body, whether congenital or acquired, when an acceptable medical source(s) documents the need for ongoing surgical procedures and associated medical treatments to restore function of the affected body part(s) (see 101.00P1). Surgical management includes the surgery(ies) itself, as well as various post-surgical procedures, surgical complications, infections or other medical complications, related illnesses, or related treatments that delay your attainment of maximum benefit from therapy (see 101.00P2).

b. Surgical procedures and associated treatments typically take place over extended periods, which may render you unable to perform age-appropriate activity on a sustained basis. To document such inability, we must have evidence from an acceptable medical source(s) confirming that the surgical management has continued, or is expected to continue, for at least 12 months from the date of the first surgical intervention. These procedures and treatments must be directed toward saving, reconstructing, or replacing the affected part of the body to re-establish or improve its function, and not for cosmetic appearances alone.

c. Examples include malformations, third- and fourth-degree burns, crush injuries, craniofacial injuries, avulsive injuries, and amputations with complications of the residual limb(s).

d. We evaluate skeletal spine abnormalities or injuries under 101.15 or 101.16, as appropriate. We evaluate abnormalities or injuries of bones in the lower extremities under 101.17, 101.18, or 101.22. We evaluate abnormalities or injuries of bones in the upper extremities under 101.18 or 101.23.

2. *Documentation.* In addition to the objective medical evidence we need to establish your soft tissue injury or abnormality, we also need all of the following medically documented evidence about your continuing surgical management:

a. Operative reports and related laboratory findings;

b. Records of post-surgical procedures;

c. Records of any surgical or medical complications (for example, related infections or systemic illnesses);

d. Records of any prolonged post-operative recovery periods and related treatments (for example, surgeries and treatments for burns);

e. An acceptable medical source's plans for additional surgeries; and

f. Records detailing any other factors that have delayed, or that an acceptable medical source expects to delay, the saving, restoring, or replacing of the involved part for a continuous period of at least 12 months following the initiation of the surgical management.

3. *Burns.* Third- and fourth-degree burns damage or destroy nerve tissue, reducing or preventing transmission of signals through those nerves. Such burns frequently require multiple surgical procedures and related therapies to re-establish or improve function, which we evaluate under 101.21. When burns are no longer *under continuing surgical management* (see 101.00P1), we evaluate the residual impairment(s). When the residual impairment(s) affects the musculoskeletal system, as often occurs in third- and fourth-degree burns, it can result in permanent musculoskeletal tissue loss, joint contractures, or loss of extremities. We will evaluate such impairments under the relevant musculoskeletal disorders listing, for example, 101.18 or 101.20. When the residual impairment(s) involves another body system, we will evaluate the impairment(s) under the listings in the relevant body system(s).

4. *Craniofacial injuries or congenital abnormalities.* Surgeons may treat craniofacial injuries or congenital abnormalities with multiple surgical procedures. These injuries or abnormalities may affect vision, hearing, speech, and the initiation of the digestive process, including mastication. When the craniofacial injury-related or congenital abnormality-related residual impairment(s) involves another body system(s), we will evaluate the impairment(s) under the listings in the relevant body system(s).

M. *What do we consider when we evaluate non-healing or complex fractures of the femur, tibia, pelvis, or one or more of the talocrural bones (101.22)?*

1. *Non-healing fracture.* A non-healing (nonunion) fracture is a fracture that has failed to unite completely. Nonunion is usually established when a minimum of 9 months has elapsed since the injury and the fracture site has shown no, or minimal, progressive signs of healing for a minimum of 3 months.

2. *Complex fracture.* A complex fracture is a fracture with one or more of the following:

- a. Comminuted (broken into many pieces) bone fragments;
- b. Multiple fractures in a single bone;
- c. Bone loss due to severe trauma;
- d. Damage to the surrounding soft tissue;
- e. Severe cartilage damage to the associated joint; or
- f. Dislocation of the associated joint.

3. When a complex fracture involves soft tissue damage, the treatment may involve continuing surgical management to restore or improve functioning. In such cases, we may evaluate the fracture(s) under 101.21.

N. *What do we consider when we evaluate non-healing or complex fractures of an upper extremity (101.23)?*

1. *Non-healing fracture.* A non-healing (nonunion) fracture is a fracture that has

failed to unite completely. Nonunion is usually established when a minimum of 9 months has elapsed since the injury and the fracture site has shown no, or minimal, progressive signs of healing for a minimum of 3 months.

2. *Complex fracture.* A complex fracture is a fracture with one or more of the following:

- a. Comminuted (broken into many pieces) bone fragments;
- b. Multiple fractures in a single bone;
- c. Bone loss due to severe trauma;
- d. Damage to the surrounding soft tissue;
- e. Severe cartilage damage to the associated joint; or
- f. Dislocation of the associated joint.

3. When a complex fracture involves soft tissue damage, the treatment may involve continuing surgical management to restore or improve functioning. In such cases, we may evaluate the fracture(s) under 101.21.

O. *What do we consider when we evaluate musculoskeletal disorders of infants and toddlers from birth to attainment of age 3 with developmental motor delay (101.24)?*

1. *General.* Under 101.24, we require reports from an acceptable medical source(s) to establish a delay in your motor development as a medically determinable impairment. Examples of disorders we evaluate under this listing include arthrogryposis, clubfoot, osteogenesis imperfecta, caudal regression syndrome, fracture complications, disorders affecting the hip and pelvis, and complications associated with your musculoskeletal disorder or its treatment. Some medical records may simply document your condition as "developmental motor delay."

2. *Severity of developmental motor delay.* To evaluate the severity of your developmental motor delay, we need developmental test reports from an acceptable medical source, or from early intervention specialists, physical and occupational therapists, and other sources.

a. If there is a standardized developmental assessment in your medical record, we will use the results to evaluate your developmental motor delay under 101.24A. Such an assessment compares your level of development to the level typically expected for children of your chronological age. If you were born prematurely, we use your corrected chronological age for comparison. See § 416.924b(b) of this chapter.

b. If there is no standardized developmental assessment in your medical record, we will use narrative developmental reports from a medical source(s) to evaluate your developmental motor delay under 101.24B. These reports must provide detailed information sufficient for us to assess the severity of your motor delay. If we cannot obtain sufficient detail from narrative reports, we may purchase standardized developmental assessments.

(i) A narrative developmental report is based on clinical observations, progress notes, and well-baby check-ups, and must include your developmental history, examination findings (with abnormal findings noted on repeated examinations), and an overall assessment of your development (that is, more than one or two isolated skills) by the medical source.

(ii) Some narrative developmental reports may include results from developmental screening tests, which can show that you are not developing or achieving skills within expected timeframes. Although medical sources may refer to screening test results as supporting evidence in the narrative developmental report, screening test results alone cannot establish a medically determinable impairment or the severity of developmental motor delay.

P. *How will we determine whether your soft tissue injury or abnormality or your upper extremity fracture is no longer under continuing surgical management or you have received maximum benefit from therapy?*

1. We will determine that your soft tissue injury or abnormality, or your upper extremity fracture, is no longer *under continuing surgical management*, as used in 101.21 and 101.23, when the last surgical procedure or medical treatment directed toward the re-establishment or improvement of function of the involved part has occurred.

2. We will determine that you have received *maximum benefit from therapy*, as used in 101.21, if there are no significant changes in physical findings or on appropriate imaging for any 6-month period after the last surgical procedure or medical treatment. We may also determine that you have received maximum benefit from therapy if your medical source(s) indicates that further improvement is not expected after the last surgical procedure or medical treatment.

3. When you have received maximum benefit from therapy, we will evaluate any impairment-related residual symptoms, signs, and laboratory findings (including those on imaging), any complications associated with your surgical procedures or medical treatments, and any residual limitations in your functioning (see 101.00R).

Q. *How do we evaluate your musculoskeletal disorder if there is no record of ongoing treatment?*

1. Despite having a musculoskeletal disorder, you may not have received ongoing treatment, may have just begun treatment, may not have access to prescribed medical treatment, or may not have an ongoing relationship with the medical community. In any of these situations, you will not have a longitudinal medical record for us to review when we evaluate your disorder and we may ask you to attend a consultative examination to determine the severity and potential duration of your disorder. See § 416.919a(b) of this chapter.

2. In some instances, we may be able to assess the severity and duration of your musculoskeletal disorder based on your medical record and current evidence alone. If the information in your case record is not sufficient to show that you have a musculoskeletal disorder that meets the criteria of one of the musculoskeletal disorders listings, we will follow the rules described in 101.00R.

R. *How do we evaluate musculoskeletal disorders that do not meet one of these listings?*

1. These listings are only examples of musculoskeletal disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s)

does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See § 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, we will determine whether it functionally equals the listings. See § 416.926a of this chapter.

3. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

101.01 Category of Impairments, Musculoskeletal Disorders

101.15 Disorders of the skeletal spine resulting in compromise of a nerve root(s) (see 101.00F), documented by A, B, C, and D:

A. Neuro-anatomic (radicular) distribution of one or more of the following *symptoms* consistent with compromise of the affected nerve root(s):

1. Pain; or
2. Paresthesia; or
3. Muscle fatigue.

AND

B. Radicular distribution of neurological *signs* present during physical examination (see 101.00C2) or on a diagnostic test (see 101.00C3) and evidenced by 1, 2, and either 3 or 4:

1. Muscle weakness; and
2. Sign(s) of nerve root irritation, tension, or compression, consistent with compromise of the affected nerve root (see 101.00F2)
3. Sensory changes evidenced by:
 - a. Decreased sensation; or
 - b. Sensory nerve deficit (abnormal sensory nerve latency) on electrodiagnostic testing; or
4. Decreased deep tendon reflexes.

AND

C. Findings on imaging (see 101.00C3) consistent with compromise of a nerve root(s) in the cervical or lumbosacral spine.

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4), *and* a documented medical need (see 101.00C6a) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or
3. An inability to use *both* upper extremities to the extent that neither can be

used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4).

101.16 Lumbar spinal stenosis resulting in compromise of the cauda equina (see 101.00G), documented by A, B, C, and D:

A. Symptom(s) of neurological compromise manifested as:

1. Nonradicular distribution of pain in one or both lower extremities; or
2. Nonradicular distribution of sensory loss in one or both lower extremities; or
3. Neurogenic claudication.

AND

B. Nonradicular neurological signs present during physical examination (see 101.00C2) or on a diagnostic test (see 101.00C3) and evidenced by 1 and either 2 or 3:

1. Muscle weakness.
2. Sensory changes evidenced by:
 - a. Decreased sensation; or
 - b. Sensory nerve deficit (abnormal sensory nerve latency) on electrodiagnostic testing; or
 - c. Areflexia, trophic ulceration, or bladder or bowel incontinence.
3. Decreased deep tendon reflexes in one or both lower extremities.

AND

C. Findings on imaging (see 101.00C3) or in an operative report (see 101.00C4) consistent with compromise of the cauda equina with lumbar spinal stenosis.

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4), *and* a documented medical need (see 101.00C6a) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)).

101.17 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint (see 101.00H), documented by A, B, and C:

A. History of reconstructive surgery or surgical arthrodesis of a major weight-bearing joint.

AND

B. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months.

AND

C. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)).

101.18 Abnormality of a major joint(s) in any extremity (see 101.00I), documented by A, B, C, and D:

A. Chronic joint pain or stiffness.

AND

B. Abnormal motion, instability, or immobility of the affected joint(s).

AND

C. Anatomical abnormality of the affected joint(s) noted on:

1. Physical examination (for example, subluxation, contracture, or bony or fibrous ankylosis); or
2. Imaging (for example, joint space narrowing, bony destruction, or ankylosis or arthrodesis of the affected joint).

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4), *and* a documented medical need (see 101.00C6a) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or
3. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4).

101.19 Pathologic fractures due to any cause (see 101.00J), documented by A and B:

A. Pathologic fractures occurring on three separate occasions within a 12-month period.

AND

B. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least *one* of the following:

1. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or
2. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4), *and* a documented medical need (see 101.00C6a) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or
3. An inability to use *both* upper extremities to the extent that neither can be

used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4).

101.20 *Amputation due to any cause* (see 101.00K), documented by A, B, C, or D:

A. Amputation of both upper extremities, occurring at any level at or above the wrists (carpal joints), up to and including the shoulder (glenohumeral) joint.

OR

B. Hemipelvectomy or hip disarticulation.

OR

C. Amputation of one upper extremity, occurring at any level at or above the wrist (carpal joints), and amputation of one lower extremity, occurring at or above the ankle (talocrural joint), *and* medical documentation of at least one of the following:

1. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or

2. A documented medical need (see 101.00C6a) for a one-handed, hand-held assistive device (see 101.00C6d) requiring the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or

3. The inability to use the remaining upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (101.00E4).

OR

D. Amputation of one or both lower extremities, occurring at or above the ankle (talocrural joint), with complications of the residual limb(s) that have lasted, or are expected to last, for a continuous period of at least 12 months, *and* medical documentation of 1 and 2:

1. The inability to use a prosthesis(es); and

2. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)).

101.21 *Soft tissue injury or abnormality under continuing surgical management* (see 101.00L), documented by A, B, and C:

A. Evidence confirms continuing surgical management (see 101.00P1) directed toward saving, reconstructing, or replacing the affected part of the body.

AND

B. The surgical management has been, or is expected to be, ongoing for a continuous period of at least 12 months.

AND

C. Maximum benefit from therapy (see 101.00P2) has not yet been achieved.

101.22 *Non-healing or complex fracture of the femur, tibia, pelvis, or one or more of the talocrural bones* (see 101.00M), documented by A, B, and C:

A. Solid union not evident on imaging (see 101.00C3) and not clinically solid.

AND

B. Impairment-related physical limitation of musculoskeletal functioning that has

lasted, or is expected to last, for a continuous period of at least 12 months.

AND

C. A documented medical need (see 101.00C6a) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)).

101.23 *Non-healing or complex fracture of an upper extremity* (see 101.00N), documented by A and B:

A. Nonunion or complex fracture, of the shaft of the humerus, radius, or ulna, under continuing surgical management (see 101.00P1) directed toward restoration of functional use of the extremity.

AND

B. Medical documentation of an inability to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 101.00E4) that has lasted, or is expected to last, for a continuous period of at least 12 months.

101.24 *Musculoskeletal disorders of infants and toddlers, from birth to attainment of age 3, with developmental motor delay* (see 101.00O), documented by A or B:

A. A standardized developmental motor assessment that:

1. Shows motor development not more than one-half of the level typically expected for the child's age; or

2. Results in a valid score that is at least three standard deviations below the mean.

OR

B. Two narrative developmental reports that:

1. Are dated at least 120 days apart; and

2. Indicate current motor development not more than one-half of the level typically expected for the child's age.

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104.00 Cardiovascular System

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F. *Evaluating Other Cardiovascular Impairments*

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9. *What is lymphedema and how will we evaluate it?*

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b. Lymphedema does not meet the requirements of 4.11 in part A, although it may medically equal the severity of that listing. We will evaluate lymphedema by considering whether the underlying cause meets or medically equals any listing or whether the lymphedema medically equals a cardiovascular listing, such as 4.11, or a musculoskeletal disorders listing, such as 101.18. If no listing is met or medically equaled, we will evaluate any functional limitations imposed by your lymphedema when we consider whether you have an impairment that functionally equals the listings.

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109.00 Endocrine Disorders

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C. *How do we evaluate DM in children?*

Listing 109.08 is only for children with DM who have not attained age 6 and who require

daily insulin. For all other children (that is, children with DM who are age 6 or older and require daily insulin, and children of any age with DM who do not require daily insulin), we follow our rules for determining whether the DM is severe, alone or in combination with another impairment, whether it meets or medically equals the criteria of a listing in another body system, or functionally equals the listings under the criteria in § 416.926a of this chapter, considering the factors in § 416.924a of this chapter. The management of DM in children can be complex and variable from day to day, and all children with DM require some level of adult supervision. For example, if a child age 6 or older has a medical need for 24-hour-a-day adult supervision of insulin treatment, food intake, and physical activity to ensure survival, we will find that the child's impairment functionally equals the listings based on the example in § 416.926a(m)(2) of this chapter.

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114.00 Immune System Disorders

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C. *Definitions*

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6. *Documented medical need* has the same meaning as in 101.00C6a.

7. *Fine and gross movements* has the same meaning as in 101.00E4.

8. *Major joint of an upper or a lower extremity* has the same meaning as in 101.00I2 and 101.00I3.

9. * * *

* * * * *

12. *Severe* means medical severity as used by the medical community. The term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation process in § 416.920 of this chapter.

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D. *How do we document and evaluate the listed autoimmune disorders?*

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4. *Polymyositis and dermatomyositis* (114.05).

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c. *Additional information about how we evaluate polymyositis and dermatomyositis under the listings.*

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(ii) If you are of preschool age through adolescence (age 3 to attainment of age 18), weakness of your pelvic girdle muscles that results in your inability to rise independently from a squatting or sitting position or to climb stairs may be an indication that you are unable to walk without assistance. Weakness of your shoulder girdle muscles may result in your inability to perform lifting, carrying, and reaching overhead, and also may seriously affect your ability to perform activities requiring fine movements. We evaluate these limitations under 114.05A.

* * * * *

6. * * *

a. *General.* The spectrum of inflammatory arthritis includes a vast array of disorders that differ in cause, course, and outcome. Clinically, inflammation of major joints in an

upper or a lower extremity may be the dominant manifestation causing difficulties with walking or fine and gross movements; there may be joint pain, swelling, and tenderness. The arthritis may affect other joints, or cause less limitation in walking or fine and gross movements. However, in combination with extra-articular features, including constitutional symptoms or signs (severe fatigue, fever, malaise, and involuntary weight loss), inflammatory arthritis may result in an extreme limitation.

* * * * *

e. * * *

(i) Listing-level severity in 114.09A and 114.09C1 is shown by the presence of an impairment-related physical limitation of functioning. In 114.09C1, if you have the required ankylosis (fixation) of your cervical or dorsolumbar spine, we will find that you have a listing-level impairment-related physical limitation in your ability to see in front of you, above you, and to the side, even though you might not require bilateral upper limb assistance.

(ii) Listing-level severity in 114.09B and 114.09C2 is shown by inflammatory arthritis that involves various combinations of complications (such as inflammation or deformity, extra-articular features, repeated manifestations, and constitutional symptoms and signs) of one or more major joints in an upper or a lower extremity (see 114.00C8) or other joints. Extra-articular impairments may also meet listings in other body systems.

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114.04 *Systemic sclerosis (scleroderma)*. As described in 114.00D3. With:

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B. One of the following:

1. Toe contractures or fixed deformity of one or both feet and medical documentation of at least *one* of the following:

a. A documented medical need (see 114.00C6) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7), and a documented medical need (see 114.00C6) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or

2. Finger contractures or fixed deformity in both hands and medical documentation of an inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7); or

3. Atrophy with irreversible damage in one or both lower extremities and medical documentation of at least *one* of the following:

a. A documented medical need (see 114.00C6) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device

involving the use of both hands (see 101.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7), and a documented medical need (see 114.00C6) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or

4. Atrophy with irreversible damage in *both* upper extremities and medical documentation of an inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7); or

C. Raynaud's phenomenon, characterized by:

* * * * *

2. Ischemia with ulcerations of toes or fingers and medical documentation of at least *one* of the following:

a. A documented medical need (see 114.00C6) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7), and a documented medical need (see 114.00C6) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or

c. An inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7).

* * * * *

114.05 *Polymyositis and dermatomyositis*. As described in 114.00D4. With:

A. Proximal limb-girdle (pelvic or shoulder) muscle weakness and medical documentation of at least *one* of the following:

1. A documented medical need (see 114.00C6) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or

2. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7), and a documented medical need (see 114.00C6) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or

3. An inability to use *both* upper extremities to the extent that neither can be

used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7); or

* * * * *

114.09 *Inflammatory arthritis*. As described in 114.00D6. With:

A. Persistent inflammation or persistent deformity of:

1. One or more major joints in a lower extremity (see 114.00C8) and medical documentation of at least *one* of the following:

a. A documented medical need (see 114.00C6) for a walker, bilateral canes, or bilateral crutches (see 101.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 101.00C6e(i)); or

b. An inability to use *one* upper extremity to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7), and a documented medical need (see 114.00C6) for a one-handed, hand-held assistive device (see 101.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 101.00C6e(ii)); or

2. One or more major joints in each upper extremity (see 114.00C8) and medical documentation of an inability to use *both* upper extremities to the extent that neither can be used to independently initiate, sustain, and complete age-appropriate activities involving fine and gross movements (see 114.00C7); or

B. Inflammation or deformity in one or more major joints of an upper or lower extremity (see 114.00C8) with:

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b)); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

§ 416.926a [Amended]

■ 4. Amend § 416.926a by removing paragraphs (m)(1) and (2) and redesignating paragraphs (m)(3) through (5) as (m)(1) through (3).

[FR Doc. 2020–25250 Filed 12–2–20; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Proclamation 10122—National Impaired Driving Prevention Month, 2020
Proclamation 10123—World AIDS Day, 2020

Presidential Documents

Title 3—

Proclamation 10122 of November 30, 2020

The President

National Impaired Driving Prevention Month, 2020

By the President of the United States of America

A Proclamation

In the United States, one person tragically dies every 50 minutes in a drunk driving incident. Far too many families experience the pain of losing a loved one to impaired driving, and even more must cope with health and financial consequences that result from this illegal and avoidable conduct. During National Impaired Driving Prevention Month, we remember the lives lost as a result of those driving under the influence of drugs or alcohol, we acknowledge the pain and suffering caused by impaired driving, we honor the brave law enforcement officers who risk their lives to protect our communities from this irresponsible behavior, and we resolve to never get behind the wheel unless we are sober.

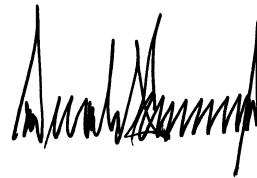
Alcohol, drugs, and certain medications can impair judgement, decrease motor coordination, and slow reaction time to the point where operating a motor vehicle is no longer safe. While deaths caused by impaired driving have thankfully fallen by more than 30 percent in the last three decades, too many Americans still make the thoughtless decision to drive impaired, threatening other motorists, cyclists, and pedestrians, killing nearly 30 people every day.

Since my first day in office, my Administration has fought to address this tragedy head on and reduce impaired-driving deaths. We are constantly working with law enforcement officers and public safety professionals to provide them with the resources and support they need to keep our roads safe. To address the root causes of impaired driving, my Administration is also assisting those with substance use disorder through initiatives like www.FindTreatment.gov, a website dedicated to connecting people with the treatment they need, and the Rural Community Toolbox, which provides funding and resources to help build strong, healthy, and drug-free rural communities. Additionally, our Nation's business owners, skilled workers, and innovative entrepreneurs have joined in this fight. The rapid expansion and improvement of existing technologies like ride-sharing and Advanced Vehicle Technologies continue to provide additional safe alternatives to impaired driving.

We must all do our part to stop the tragedies caused by impaired driving. This month, I encourage individuals across America to recommit to working together to reduce the number of crashes, injuries, and fatalities on our Nation's roads. Let us vow to act responsibly, always drive sober, and keep our communities safe.

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 December 2020 as National Impaired Driving Prevention Month. I urge all Americans to make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, 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.



[FR Doc. 2020-26792

Filed 12-2-20; 11:15 am]

Billing code 3295-F1-P

Presidential Documents

Proclamation 10123 of November 30, 2020

World AIDS Day, 2020

By the President of the United States of America

A Proclamation

Today, our Nation joins millions across the globe in remembrance of the precious lives lost to human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)-related illnesses, and we reaffirm our support for those living with these diseases. Thankfully, decades of remarkable advancements and improved understanding have put us within reach of ending its devastating impact. Through increased awareness, revolutionary prevention strategies, and safe and effective treatment regimens, we will soon end the AIDS epidemic once and for all.

Over the past 40 years, HIV and AIDS have infected more than 77 million people worldwide and claimed no less than 35 million lives, including those of 700,000 Americans. Currently, there are approximately 1.2 million people living in the United States with HIV, including roughly 170,000 people who have not been diagnosed. Additionally, it is all too clear that this deadly disease disproportionately affects racial and ethnic minorities.

As President, I promised to end the AIDS crisis in America within a decade, and I am proud to report that we are on track to meet that goal. In 2019, I announced *Ending the HIV Epidemic: A Plan for America*, a bold whole-of-society approach to eradicating this disease. Already, we have sent \$227 million to cities, counties, States, local health departments, and community health centers to support and bolster their efforts. Under this plan, our Nation's scientists, researchers, and medical professionals have been able to identify where HIV is spreading most rapidly, which informs decisions about where to focus funding and provide support to public health officials who are addressing needs at a local level to eradicate AIDs. This July, as part of these efforts, the Centers for Disease Control and Prevention awarded \$109 million to 32 State and local health departments to support core HIV diagnosis and prevention activities. Additionally, the Ryan White HIV/AIDS Program of the Health Resources and Services Administration (HRSA) is continuing to provide those diagnosed with access to high quality, comprehensive primary care. Under HRSA's Bureau of Primary Health Care health centers have implemented critical early detection initiatives that have produced life-saving diagnoses of Americans living with HIV, saving countless American lives.

Across many fronts, our response has been comprehensive—and it is working. Preventative measures such as Pre-Exposure Prophylaxis (PrEP) and syringe service programs are reducing the number of new HIV transmissions and, if one has already been exposed, Post-Exposure Prophylaxis (PEP) is helping prevent further spread of infection. In 2019 alone, federally funded health centers provided more than 2.7 million HIV tests to over 2.2 million patients. The Ryan White HIV/AIDS Program has proven remarkably successful at viral suppression, reducing viral loads in 87.1 percent of its clients' cases in 2018. And the National Institutes of Health continues its work to develop a vaccine.

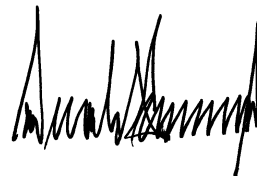
Outside of the United States, my Administration's global response is being led by the world's most advanced health experts and diplomats through the President's Emergency Plan for AIDS Relief (PEPFAR), the most successful

health initiative in American history. When first launched in 2003, there were 26.6 million Africans infected with AIDS and only 50,000 receiving lifesaving antiretroviral treatment. Today, more than 15.7 million men, women, and children in Africa are receiving these vital treatments. PEPFAR has saved over 18 million lives, prevented millions of HIV infections, and accelerated progress toward controlling the HIV/AIDS epidemic in more than 50 countries.

Through these and other initiatives we are bringing to a close a painful chapter in human history. For the past many decades, HIV and AIDS have inflicted untold suffering on millions of people both here at home and abroad. But by the end of this decade, we will have eliminated this scourge from our country and released much of the rest of the world from its deadly grip.

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 December 1, 2020, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other Territories subject to the jurisdiction of the United States, and all Americans to join me in appropriate activities to remember those who have lost their lives to AIDS and to provide support and compassion to those living with HIV/AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, 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.



Reader Aids

Federal Register

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